









# THE COURT FEES AND THE SUITS VALUATION ACTS

CONTAINING A CRITICAL INTRODUCTION, AN EXHAUSTIVE  
COMMENTARY AND SEVERAL APPENDICES CONTAINING  
THE CIRCULAR ORDERS, RULES AND NOTIFICATIONS OF  
THE LOCAL GOVERNMENTS AND THE HIGH COURTS, ETC.

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## PREFACE TO THE THIRD EDITION.

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A revised edition was long overdue as there has been several important decisions on various provisions of the Court Fees Act since the last edition was published. Though the much desired reform of the Act by a thorough remodelling thereof appears to be still as distant as it was years ago, still I feel it my duty to add my feeble voice to the volume of criticism already launched against the various provisions of the Act, and express the fervent hope that the Act may be thoroughly overhauled and brought up to date. However it is a hopeful sign that some provincial governments have begun to realise that the question cannot be indefinitely shelved. For instance, Bengal has recently enacted an Amending Act, which has improved the main Act in some particulars. It has also at the same time made some innovations, notably the provision for the postponement of payment of court-fee by a party on his furnishing security therefor, and for the collection of court-fee as a tax after the termination of proceedings. How far this provision for the collection of court-fee as a tax will necessitate the revision of the accepted view regarding the nature of court-fee is a matter yet to be investigated.

Various improvements have been effected in this edition. A larger number of decisions are cited and several portions of the commentaries have been entirely rewritten. Commentaries on the Suits Valuation Act have also been added. The case-law has been brought up-to-date.

I thank the legal public for the generous welcome they have accorded this publication. My thanks are also due to Mr. K. Krishnamurthy on the staff of the High Court who helped me in bringing out this edition and Messrs. V. S. N. Chari & Co. for their care and expedition in seeing this through the Press.

High Court Buildings, }  
MADRAS, }  
25th January 1936. }

R. SATYAMURTI AIYAR.

## PREFACE TO THE SECOND EDITION.

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My thanks are due to the legal profession for the warm welcome they have accorded to the first edition of this publication.

The author is happy to note that the Introduction which dealt with the manifold defects of the Act and set out constructive proposals for amendments has served its purpose and that there are indications that the remodelling of the Act will be taken on hand without further delay.

Several improvements are effected in this edition, the Introduction is made fuller and more comprehensive, portions of the commentaries are rewritten, condensed or elaborated as was found expedient; the case law is brought up to date and several topographical changes are made to make the book more handy and facilitate reference.

The author is grateful to the Hon'ble Mr. Justice Waller, for the deep interest evinced by him in all matters relating to court-fees which has been a source of great encouragement to the author in his attempts to solve several of the knotty questions that arise under the Act.

Thanks are again due to Mr. Verghese, Chief Court-Fee Examiner, High Court, (now District Munsif) whose practical knowledge in the working of the Act in the moffusil especially in the Andhra and Malabar districts has been of great help to the author, and to the publishers Messrs. V. S. N. Chari & Co. for their characteristic enthusiasm in doing the work entrusted to them with thoroughness and promptitude.

High Court Buildings,  
Madras.  
30 April 1932.

R. SATYAMURTI AIYAR.

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## INTRODUCTION.

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*"The intention of the Legislature is to be carried into effect whatever may be the view of the judicial interpreter of its wisdom or justice".*  
Maxwell on Interpretation of Statutes.

*"We are not responsible for these Acts \* \* Whether we approve of them or not we have no power to alter or amend them".*  
Per Edge C. J. in 12 All. 129.

It is certainly now too late in the day to discuss the pros and cons of the question whether litigants should be charged any fee for getting redress in judicial tribunals nor will any useful purpose be served thereby. Even in the case of suits filed on the original side of the Chartered High Courts and appeals therefrom, which were originally not liable to any institution fee, a system of *ad valorem* fee on a sliding scale has been introduced thereby indicating that the principle of levying court-fee on suits is not only accepted but also extended. It is hardly worth while to consider whether there are precedents for the taxation of justice in the Hindu Smritis or the ancient Roman Law, and whether where the Yagnavalkya smriti or the Code of Justinian provided for the levy of a fee from one or the other party to a litigation or from both, it was not merely in the nature of a fine to check vexatious litigation but was also a tax to cover the expenses of the State in the administration of Justice. Such and kindred topics are of little interest to the practical lawyer of to day. "A fact cannot be altered by a hundred texts" as the ancient Hindu law books put it. The Act has been on the statute book for over half a century and may be taken to be a fixture. The only points worth considering therefore, are whether and if so, how far the Act is defective<sup>1</sup> and in what particulars, and how best the Act could be improved so that its provisions may be rendered more equitable and effective than they are at present and the levy of the fee may not result in the negation of justice to *bona fide* litigants.

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1 "The Court-Fees Act, it has been repeatedly pointed out is full of defects and imperfections. See the valuable introduction to Mr. Satyamurti Ayyar's Commentaries to the Court-Fees Act " Per Venkatasubba Row J. in *Abdul Hakim v. Chattanadha Ayyar*, A. I. R. 1931 M. 457 at 459.



The Court-Fees Act dating from 1870 has been the target of such adverse criticism that it will be more like flogging a dead horse to direct further criticism against it and catalogue its manifold defects. But one pauses to enquire whether after all, it has not outlived its usefulness, and seamed and scarred as it is with amendments and repeals, it would not be expedient to scrap it altogether, and enact a brand new Act in the light of experience gained by the working of this fiscal enactment for the past several decades. The irony of it is, however, that in spite of all this, the legislature has not, for reasons not at all apparent yet made up its mind to effect this necessary reform which is certainly overdue. The Government of India more than a decade did prepare a draft bill for a new Court-Fees Act and nothing came out of it afterwards.

The obscure and inartistic drafting of the Act, its obsolete provisions, its antique procedure and its ambiguous expressions have all been severely criticised by the learned Judges of the several High Courts and have also been commented on in this book. In *Balkaran Rai v. Gobind Nath Tiwari*, 12 A. 129, for instance Mahomud J. has forcibly expressed his view thus : " I think it is within my province to point out clearly as a judge of this court that I do not understand that the provisions of the Court-Fees Act as they now have been interpreted can operate otherwise than to retard, and in many cases obviate the possibilities of justice being done to the parties who did not happen to have sufficient pecuniary means to abide by the stringent requirements of the letter of the statute itself. The enactment as the learned Chief Justice has explained is most anxious to collect money from those who seek to obtain justice but there is not one word in that statute to enable the litigant who is to be subject to these stringent rules, to reobtain the sum of money which he, by a wrongful user of the powers given to the taxing officer does pay as court-fee. \* \* \* I mention this on purpose as I hope that this enactment will soon be considered fit to be amended and that a difficulty such as has risen in this case may not arise in future and that no pleas of *ad miseri cordium* such as were addressed in this very case might be made the subject of consideration of the judges of a whole High Court established by Her Majesty's Charter. The stringency of the Act as it has now been interpreted is probably a good thing for the litigant, because it indicates the necessity of amendment on his behalf. I hold, following the views of Jeremy Bentham, that law taxes, the more stringent they are, the less do they achieve their aim, for they are stringent not in the

interests of justice but make the administration of justice difficult and in many cases impossible."

Starting at the very beginning, it may be noticed that the Act has no preamble. The same learned judge of the Allahabad High Court observed "I had difficulty in considering the statute known as the Court-Fees Act which begins without a preamble and leaves it to the judges to decide what its objects were, and to gather those objects from the enacting clauses." This echoes the sentiment expressed by Lord North in *Vigram v. Ryer*, 36 Ch. Dn. 87, where his Lordship deprecated the very lamentable way of legislating that drives the judges to get at the meaning of the Acts "by removing difficulties by construction rather than that the intention of the legislature should be clearly expressed on the face of the Act."

Clarity of expression and elegance in drafting, are at any rate not the characteristics of this Act, whose "obscure drafting" is commented by Mullick J. and whose "unfortunate wording" is deprecated by Miller C. J. in *1 Pat. 336*. Scores of instances could be cited to justify the above criticism. For instance no expression has been the subject of a greater diversity of construction than the phrase "right to a share" in s. 7 (iv b.)<sup>1</sup> Again the use of the word 'plaintiff' and the omission of the word 'appellant' in s. 7 (iv), has given rise to a deal of conflict of views that Sulaiman J. observed "that the absence of uniformity is unsatisfactory and leads to inconvenience and the embarrassing result is due to the drafting of the section as it stands." (*Vide 47 A. 762*).<sup>2</sup> Yet another instance is the use of the word "suit" in section 11. According to their Lordships of the Bombay High Court "the use of the word is quite unfortunate and misleading," (*12 B. 98*) and the learned judges of the Calcutta High Court commenting on the same in *24 C. 173* observe that the word has different meanings in different places in the section "forming an exception to the ordinary rule of interpretation of statutes that the same expression should not be given different meanings in the same section."

One of the most annoying features of the Act is that it is replete with words and expressions for which no definition is given in the Act leaving it to the reader to ascertain the correct import as best as he may from other sources that range between the General Clauses Act on the one hand and the Oxford Dictionary of the English Language

1. This defect has been rectified by the Bengal Amendment Act VII of 1935.
2. *Vide* discussion at pages 133 and 136 *infra*.

on the other. A most common instance is the use of the word "value" and though within the four corners of the Act there are at least three different methods of computation, the expression is used very loosely without specifying how it is intended to be ascertained in individual cases. As has been observed by their Lordships of the Allahabad High Court in 44 A. 542, "The legislature did not intend to say, and has not said anything as to how the valuation should be arrived at".<sup>1</sup> Again there is no definition of what a "garden" is, and this has given rise to a conflict of decisions as to what a Malabar Paramba is. Nor is there any method laid down for the valuation of the title deeds of immoveable property. Then in s. 17 there is no specification of what a "subject" is.<sup>2</sup> And regarding the use of the words "summary decision" in Sch. II, Art. 17, Westrop, C. J. observes in 2 B. L. R. 235, "The meaning of the words 'summary decision' is not sufficiently well known to justify the use of them as a technical term in an Act of the Legislature without any definition." As observed in *Krishna Mohan v. Raghunandan*, 4 Pat. 336, "the wording of this Act is in some respects certainly unscientific and difficult to interpret and its interpretations has been the subject of a multitude of decisions in the courts." There are several such instances in the whole Act that justifies the remark of the learned judges of the Bombay High Court in 4 Bom. 515 that the "Court-Fees Act might be advantageously amended with a view to the attainment of a higher degree of perspicuity than it now possesses"; and this is evident also from the observations in 2 Bom. 219.

Another defect noticeable in the Act is that while it provides for certain classes of suits, its provisions are seldom exhaustive. For instance s. 7 (ii) provides for 'suits for maintenance' but does not provide for 'suits to reduce maintenance.' As was observed by their Lordships of the Bombay High Court in 4 B. 515, 'it is remarkable that although in Cl. (iii) of s. 7 the Legislature expressly provided for 'suits to raise attachments from land' it has not made any express provision for 'suits to restore attachments on land', which might fairly have been expected to be placed on the same level in respect of court-fees as suits to raise such attachments. Whether the mode of computation as laid down in clause (viii) would be fair in either of those cases is open to question'. The Act contains no rules and prescribes no method of arriving at the amount or value of the subject-matter of

1. For a fuller discussion see p. 600 *infra*.

2. This has been rectified in Bengal by the Bengal Amendment Act VII of 1935.

the suit except where the subject-matter is land, house or garden (*vide* 40 M. 1.) Section 7 (v) is again defective in that there is no provision for the case of a fractional share of the part of an estate that might have been separately assessed to revenue. To quote the language of the late Chief Justice of the Madras High Court Sir V. M. Coutts-Trotter "It has led to an absurdity. For instance you may have cases where if you sue for the recovery of whole plot if it falls under s. 7 (v b) taking five times the revenue would result in a lower value than if you sue for a portion of the land which has to be taken at the market value."<sup>1</sup> In a recent decision of the High Court at Lahore (9 Lah. 563) their Lordships deprecated "the anomaly in the Court Fees Act that in some cases a person who appeals only against a part of a decree should have to pay more court-fee than one who appeals against the whole of it."<sup>2</sup> Courts while conscious of the 'extreme inconvenience' of the position—for it amounts to nothing less than the startling proposition that a part is greater than the whole—find no possible escape from it, the Act being as it is.

The various notifications issued by the Governor General and the several Local Governments and long string of "Reductions and Remissions" of court-fees and the various amending Acts, indicate the necessity that has arisen off and on to alter or supplement sundry provisions of the Act.

In spite of all its various provisions its sections, paragraphs, sub-paragraphs, clauses, schedules and articles, the Act gives many loop-holes to a clever litigant to escape payment of the proper-fees. The rule by which a plaintiff is permitted to value his suit as he chooses is found to be quite unsatisfactory in several cases. The rules regulating suits for a bare declaration and for consequential relief, afford ample scope to a clever litigant to escape payment of a just fee. As observed by their Lordships of the Calcutta High Court in 39 Cal. 704 "It is a common fashion to attempt the evasion of the Court-fees Act by casting the prayers in the plaint into a declaratory shape". Such instances could be multiplied.<sup>3</sup>

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1. See the decision in 1927 Mad. 1002 and comments thereon at pp. 153 to 162, *infra*.

2. *E. g.* Appeals, in suits for redemption, pre-emption, or against conditional decrees.

3. Their Lordships of the Calcutta High Court refer to an anomaly in a decision reported in 39 C. W. N. 131 and observe (p. 132) "It is for the Legislature to cure it. We must administer the law as we find it". In 52 C. 875 at p. 878 their Lordships observe in another case, "it is plain that further provision by the Legislature is imperatively required."

Another regrettable matter is that the Act has not kept pace with other enactments as for instance, the Code of Civil Procedure. When the Code of 1908 made sweeping changes in processual law, the Court-Fees Act which when it was drafted, was in accord with the then prevailing law, has stagnated and it was not amended to bring it in a line with the later statutes. The result is that several of its sections are either archaic or unworkable. A glaring example of this anachronism is noticeable in s. 11 which relates to the postponement of an enquiry for the ascertainment of mesne profits, in execution proceedings. This is opposed to the scheme of O. 20, r. 12 of the Code of Civil Procedure (*Vide* Commentaries under s. 12 of the Act for a critical discussion of this topic). A similar difficulty is experienced in s. 7 (iv) which provides that the plaintiff in a suit for accounts shall state the amount at which he values the relief he claims. This obviously implies that the plaintiff is at liberty to give any arbitrary valuation which may or may not be an approximate value, which the Code of Civil Procedure requires the plaintiff to give. The whole trouble has arisen to quote the words of Sulaiman J. in 47 A. 756 "from the circumstance that the amendments of the Court-Fees Act have not kept pace with the amendments of the Code" or as their Lordships of the High Court of Lahore put it, "It is a bit unfortunate that there should be any difference in language in the two enactments in respect of a particular suit. The reason for this divergence is apparently due to the fact that the Court-Fees Act having been enacted long prior to the present Code of 1908, *no attempt has been made to keep the former Act properly amended and to accord with the provisions of the Civil Procedure Code*". Yet another example is found in s. 10 of the Act which provides for the dismissal of the suit for non-payment of proper court-fee when the provision in O. 7, r. 11, Civil Procedure Code is different and the procedure therein laid down is to reject the plaint. Rejection of a plaint and dismissal of a suit are two totally different things with different legal incidents and this want of harmony between the Code and this Act is quite unfortunate. Still another example is found in Sch. II, Art. 17 (v) *viz.*, a suit to set aside an adoption. The expression was borrowed from the Indian Limitation Act, 1859, and though the latter Act has been re-enacted twice later, in 1877 and 1908, yet the Court-Fees Act continues to remain as it was, and the good old expression is perpetuated. While the whole statute law of the land has been amended, repealed, or re-enacted and kept up to date, the Court-Fees

Act, for reasons not easily apparent, has been left severely alone or patched up here and there in at best a perfunctory way. As one of the learned Judges of the Allahabad High Court put it "the language of the old Court-Fees Act is now sought to be applied to a state of things which could not have arisen in the same acute manner when the Act was passed."

Further it is an unsatisfactory feature that the provisions of the Act are sometimes hardly fair to the litigant. A couple of illustrations selected at random will bear out this criticism. Where an excess court-fee is paid by the party, s. 10 provides that the court *may* refund the excess, but where the court-fee paid is deficient and the deficiency is not made up, the court *shall* dismiss the suit. Again under s. 12, the decision as to the question of the adequacy of court-fee is final so far as the party is concerned, but the appellate court can re-open the matter in case the decision of the lower court is detrimental to revenue. It is but fair that the refund should be as imperative as the dismissal, and the finality of the decision as to court-fee should be equally binding both on the litigant and the Crown. The same remarks apply to payments made on account of a wrong decision of the taxing officer. See the remarks of Mahmud J. in 22 A. 129. As observed by Daniels J. in 47 A. 98, "It is probable that if such and other matters are brought to the notice of Government, it will not consider it desirable to impose an *ad valorem* fee on a party who is merely asking a Court to right a wrong unintentionally done by the Court itself."

The Act has been amended piece-meal without any settled plan, to suit the exigencies of certain situations as and when they arose. And, as has been observed by Mukerjee J. in 18 C. L. J. 308, "the repeated amendments of the Act give rise to questions of considerable nicety which are by no means free from difficulty and this is attributable to the fact that the Court-Fees Act has been amended *piece-meal* from time to time." The several local legislatures have tinkered with the Act merely with a view to raise more revenue and there has been no attempt at enacting a coherent, logical and clear Act. Even where amendments have been made by the local legislature they too are equally defective, necessitating the intervention of the executive by framing rules under s. 35 to rectify an anomaly or relieve a hardship. For example the local Governments had to include orders under s. 144 of the Civil Procedure Code to the benefits of a reduced fee under Sch. II, Art. 11. Again regarding Art. 17-B of Sch. II in Madras, the Government had

to issue a notification reducing the fee payable in Second Appeals from decrees of Revenue Courts and it has led to the curious result that the Government set about to *reduce* the fee to Rs. 15 when the Article itself provided only for a fee of Rs. 10 in the case of appeals. Again an anomaly was created by the non-inclusion of the words "memorandum of appearance" along with the vakalatnamas and muktarnamas in Art. 10, Sch. II. This had to be rectified by notifications. And these by no means are perfect either. There is again a confusion in the case of the court-fee payable in 'small cause suit' and 'suits of a small cause nature' but tried as original suits. The Government of Madras have admitted that the Sch. II, Art. 2 gave relief to cases not intended to be relieved against. While the wording of the Article gives relief where it is not intended, it denies where it is intended. The omission of the words 'Memorandum of appeal' in Article 2 (Madras) makes it inapplicable to appeals. Does the legislature think that a lower court-fee should be paid only in *suits* of a nature cognizable by Courts of Small Causes and not in *appeals* therefrom? Does the nature of a suit change in appeal? Obviously not. Then why this omission?<sup>1</sup> There are several instances of such anomalies. These are referred to just to emphasise the fact that with an Act vague in expression and inartistically drafted, the several local amendments of the Central and Provincial legislatures, and the long string of Reductions and Remissions one will not be over-drawing the picture if one observes, that the whole is a bewildering maze, which to borrow the expression of one of the learned judges of the High Court of Madras used in some other connection "resembles a mosaic of broken tea-cups."

If one simply runs through the provisions of the Act its defects become palpable. They are all set out *in extenso* in the body of this book. Section 3 is condemned as "a most clumsily worded section." "So far as its language goes it does not profess to prescribe a court-fee; but by implication it prescribes a court-fee in certain cases. It is clearly an instance of bad drafting." (*Abdul Hakim v. Chhattanada Iyer*, A. I. R. 1931 M. 457).<sup>2</sup> The wording of section 4 is unfortunate (Per Miller J. in *4 Pat. 336 at 349*). The heading of Chapter III is incorrect. The difference in the language used in sections 4 and 6,

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1. For a fuller discussion see pp. 453-4.

2. Again the section seems to imply payment of dues to the officers or clerks of courts and courts are driven to the necessity of putting a gloss over it and construing the section to mean only the court-fee paid to the crown. 45 M. 840.

while it is certain that the legislature did intend to make no distinction creates a needless confusion.<sup>1</sup> Section 7 is cumbrous, and defective in several respects. Paragraph iv is described as an "unsatisfactory" provision. Paragraph vi is sometimes unfair (39 *All.* 19). Paragraph viii is not clear (35 *C. 202 P. C.*). Paragraph ix provides an inadequate fee in cases of foreclosure.<sup>2</sup> Further there is the absence of any clear provision vesting in Courts the power to check the valuation of the suits.<sup>3</sup> Section 8 is unnecessary. It has been found by experience that very exorbitant claims are made in references in land acquisition cases, because no fee is charged on such references. The section is also obsolete especially after the amendment of the Land Acquisition Act.<sup>4</sup> Section 9 is redundant and inadequate.<sup>5</sup> Section 11 para 2 is obsolete. Section 12 is defective in several respects. The wording of the section seems to be obviously opposed to the real intention of the legislature. The section strictly construed appears to preclude the appellate court from interfering with the decision of the lower court where it went wrong on a question law but could do so, when it committed an error in deciding a question of fact. This question has recently been referred to a Full Bench in the Madras High Court.<sup>6</sup> Another anomaly is referred to in the decision of the Calcutta High Court in 39 *C. W. N.* 131. 'The Taxing Officer's decisions regarding court-fees payable on the memorandum of appeal would be final, whereas if the court did not agree with the Registrar, a different result would be reached with reference to the court-fee payable on the plaint in the suit in which the appeal has arisen.' Their Lordships characterise this as an anomaly but held that it is for the legislature to cure it and observe that courts "can administer the law only as they find it." Further Section 12 gives an one sided protection and is also defective in that it discloses no method of collecting deficit court-fees and courts had always to take it upon themselves to realise it by such lawful means as might be open to them. (*Bajjnath v. Dhanni Row*, 1929 *A.* 571.) There are conflicting decisions as to the finality of decisions under the section. Section 13 clashes with the

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1. Difficulty is experienced in section 6 by the words 'filing' 'exhibiting' etc. with reference to courts. *Vide* p. 35 for further discussion.

2. This has been remedied in Central Provinces and United Provinces by local amendments.

3. This is remedied in Bengal by the enactment of S. 8-C by Act VII of 1935.

4. *Vide* p. 218 *infra*.

5. See p. 226 *infra*.

6. See 69 *M. L. J.* Notes of recent cases, p. 77, *infra*.



amended provision in the Code of Civil Procedure, O. 41, R. 23. Section 14 encourages in some cases an idle formality. Section 15 para 2 does not agree with provision in the Code of Civil Procedure. Section 16 is a gap. The wording of section 17 is vague without a definition of the word "subject."<sup>3</sup> Section 19 abounds with unnecessary provisions, *vide* clauses 1, 3 and 8. Sections 19-A to 19-K have been wedged into the Act. They are found in Chapter III-A. The sections were introduced partly in 1875 and partly in 1899 and the two parts have not been properly co-ordinated. The point is not clear beyond doubt whether the fee levied for issue of Probates or Letters of Administration is court-fee or a tax. It appears to partake of the incidents of both. Unlike court-fee there is a minimum value fixed which is exempt from duty, it could be collected after the termination of proceedings and a penalty could be levied for payment of deficit duty and the same could be realised by the revenue authorities as revenue. Still the provisions are embodied in the Court-Fees Act<sup>4</sup>. In certain cases probates of wills extend to the whole of British India and difficulties are now experienced which arise from the different rates of fee available in the several Provinces. The want of a coherent plan will also be evident from this single fact that the rule making provisions are scattered over seven sections in four different chapters namely Sections 19-H, 20, 21, 22, 23, 27 and 34. Similar remarks apply to sundry Articles in the Schedules. Verily this is a dismal picture of the Act.

When in a suit on a promissory note for Rs. 1,000 for instance, the plaintiff has to pay *ad valorem* fee of about Rs. 120 while a person seeking to recover immoveable property *e. g.* land assessed to revenue of the same market-value and a declaration of his title thereto necessitating a decision on sundry questions of the law of real property and the personal law of the parties, has to pay the nominal fee of about Rs. 11 or 12 calculated on 10 times the annual revenue, where a poor widow seeking maintenance at the rate of Rs. 10 per mensem has to pay a court-fee about of Rs. 12, while the scion of a Zamindar's family filing a suit for a declaration that the alienations made by the zamindar are not valid or binding and that he is entitled to succeed to the zamindary, has to pay a fee for declaration, *vis.*,

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1. See page 309.

2. See p. 315.

3. See p. 321 for a discussion of this topic.

4. For a full discussion thereof see pp. 387 and 388 *infra*.

Rs. 10 (*Vide* 7 M. 134—but happily the Madras amendment has taken a proper view), where a plaintiff, seeking to recover a few acres of *inam* land has to file his suit in a Subordinate Judge's court and pay hundreds of rupees as court-fee, while a plaintiff seeking to recover land of the same value but assessed to revenue, could file it in the court of a District Munsif and pay a far lesser court-fee, one is astonished at the lack of a due sense of proportion and pauses to enquire whether after all there is not something radically wrong somewhere.

Even a cursory examination of the provisions of the Act would reveal the fact that the fee is unduly heavy in the case of suits for the recovery of money, and is comparatively light in the case of suits relating to immoveable property. This is to some extent due to the fact that the intrinsic or market-value of land assessed to revenue, is taken to be a multiple of the annual kist thereon. That is an error, and a grave one too, and the earlier it is rectified the better.<sup>1</sup>

In the case of suits dealt with by the High Court in its ordinary or extraordinary original civil jurisdiction several difficulties arise in the matter of the levy of court-fee. A glaring instance is the famous Pitapur suit (C. S. No. 242 of 26 on the file of the High Court of Madras) when the plaintiff valued his claim at 30 lakhs of rupees, while the defendant valued it at 2 crores and the court-fee paid was found deficient to the tune of Rs. 72,000. Still, the Court had to accept the valuation put by the plaintiff, and Waller J. who decided the question observed that he came to that conclusion with reluctance, and considering the importance of the matter suggested the desirability of making certain necessary amendments to the Statute law. But it still remains to be done.

Again there is no indication in the Act on what principle the fee is levied. What is the nature of the fee? Is it simply a tax as the income tax? (See 56 M. L. J. 302; 8 A. 289; 4 Pat. L. J. 57 and 24 C. W. N. 33). If so, one would naturally expect a minimum valuation of suits which are exempt from the tax. But there is none. Again the fee should be proportionate to the intrinsic value of the claim. And numerous examples have been cited to demonstrate that this principle is not adhered to. Or, is the court-fee "the *price* payable to Government for the trial of the suit," to quote the words of Wallace, J. in 49 M. L. J. 608? In that view of the case the fee must

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1. This is remedied in Bengal by Act VII of 1935.

be commensurate with the time and trouble taken by the court. That is the principle on which sitting fees for the days of the hearing of a suit are collected on the original side of the High Court. But there is no provision for that, in the Act. Or, is the fee only designed to discourage speculative litigation by placing certain obstacles in the way of intending suitors, by making it a costly luxury not to be lightly indulged in? If so, has the object been achieved? It is apprehended not. In the Court Fees Act there are provisions relating to the fee to be collected in testamentary cases as Probate, Letters of Administration, etc. Is the duty tax or court-fee? Courts have held that to be court-fee.<sup>1</sup> But has it the incidents of court fee? There is a minimum valuation which is exempt from the fee. Is there such a minimum in the case of court-fee? No. In the case of Probate duty courts have no jurisdiction to question the adequacy of the fee unless the revenue authorities move in the matter. Unlike court-fee there is a penalty leviable for payment of deficit probate duty. In this respect it has the attributes of stamp duty. The utmost sanction for non-payment of adequate court-fee is the dismissal of the case but in the case of inadequate payment of stamp duty or probate duty, a penalty is levied whether the party elects to continue the proceedings or otherwise. Further, no court-fee could be collected after the termination of the proceedings<sup>2</sup> but probate duty is collectable long after the proceedings end. In spite of all these radical and fundamental differences between probate duty and court-fee, provision relating to these are embodied in the Court-Fees Act as if they are homogenous matters.

One of the results of the want of a clear conception of these matters is the difficulty in ascertaining who are the parties who are really interested in a court-fee question. Is it the Government, where finances may be affected by an adverse decision or is it the defendant who in the guise of safeguarding the revenue may be anxious to make the plaintiff or appellant pay a higher court-fee? Decisions are not uniform and it is regretted in some cases irreconcilable, so that it is hardly possible to extract any principle therefrom that will solve this vexed question. If the Government is deemed to be the only party interested in this issue, does it get notice about it in the trial court as in the case of applications to sue *in forma pauperis*? Not in all

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1. See 52 C. 875 at p. 878.

2. A new innovation is found in the Bengal Court Fees Amendment Act which provides for collection of deficit court-fee *after* the termination of proceedings as arrears of tax.

cases. If it does get notice and if the issue is decided against it, can it appeal against it, or file a revision petition? The approved view is that it cannot, as it is not a party. Can the defendant take the objection? He could and could not. The decisions do not clearly define his position. There are cases where the plea of inadequacy of court-fee have been raised in the written statement and an issue joined thereon. But there are also decisions to the effect that section 12 is a bar to such a plea, that once the court decides *ex parte* or otherwise that the court fee is sufficient, the decision is final. If so, where is the opportunity to the defendant to raise the plea? Further if the defendant raises it he may be met with the answer that the question is one for the Government and not for a party to raise. If the defendant does raise it and his plea is not accepted, can he appeal against that or file a civil revision petition? The answer is in the negative, because it is covered by s. 12 by which all such findings regarding the fee are held to be final. But can the plaintiff against whom there is a finding appeal or file a civil revision petition? Yes he could. But how in the face of s. 12? There is thus in the Act the want of a clear conception of the nature of court-fee.

The discussion about the Court-Fees Act will not be complete without a reference to the sister enactment, *viz.*, the Suits Valuation Act. If the criticism levelled against the former Act is that its provisions are not exhaustive, and the fee levied in sundry cases is quite disproportionate to the intrinsic value of the claim, the Suits Valuation Act is worse. The latter Act is at best a mere fragment. Barring the purely introductory sections 1, 2 and 7 which merely define the local extent of application of the Act, s. 10 that has been repealed, and s. 12 that simply says that the Act has no retrospective operation there are hardly half a dozen sections left. Of these ss. 3 to 6 refer only to the authority of the local Government to frame rules, and s. 9 refers to similar powers vested in the High Court. These powers have not been exercised at all in several Provinces, and the provisions remain a dead letter for the past nearly half a century.<sup>1</sup> Consequently there are only two sections in the whole Act, that have to be considered. Of them s. 8 simply depends on the Court-Fees Act, and in the

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1. "It is unfortunate that the High Court has not yet framed any rule under S. 9 of the Suits Valuation Act" "as the object, which the legislature seems to have had in view in enacting that section, was to provide some check upon the practice which the plaintiff in certain classes of cases, puts a purely arbitrary valuation upon the relief which he claims" 39 C. W. N. 131 at pp. 132 and 135. See also 61 Cal. 796 (F. B.) *cited* at p. 69 *infra*.

case of the suits catalogued therein, one is merely referred to that Act. The other section is s. 11 coming under a Part curiously labelled "Supplementary Provisions"—though there is precious little to supplement—and is the only one that can be stated to be a really useful section and that specifies when objections as to valuation could be taken and what is the effect of an over or under valuation. Can it be doubted then for a moment that the rules regarding the valuation of suits are in a nebulous state? As the members of the select committee which considered the Court-Fees Bill in 1924 remarked it is generally admitted that land suits are undervalued and disposed of by Courts not strictly competent to try them. Cases are not wanting where the provisions of the Suits Valuation Act, as they at present are, sometimes lead to the startling result that a higher claim is sometimes tried by an inferior tribunal while a lesser claim goes before a superior tribunal. (*Vide 50 M. 646*). This finds a counter part only in the Court-Fees Act where a smaller claim is liable to a higher fee and *vice versa* (*vide 8 L. W. 88*). The question naturally arises therefore, why, if the Legislature expected as early as 1887, that rules will be framed under the Act, and therefore simply outlined the provisions and left a framework hoping that the several Local Governments and the High Courts will work out the details and fill in the gaps, the provisions were completely ignored<sup>1</sup> and allowed to remain a dead letter and questions relating to valuation and jurisdiction continue to be decided on precedents and practice without any attempt being made to formulate rules and set out the law in a clear cut form?

So far about the defects. Now what is the remedy? There is only one and that is nothing less than a thorough overhauling of the Court-Fees Act by constituting an expert committee composed of persons who are quite conversant with the mofussil practice and have been in live touch with the litigation in the parts to which the Act is made to apply. They alone will have the requisite knowledge and hence the competence, to judge how far the present system in several cases deters a really aggrieved party from seeking redress in judicial tribunals, and in other cases tends to encourage the gambler in litigation. The effect of the unequal and in many cases illogical levy of court-fees on the

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1. Some High Courts rules have framed under the Act. See pages 869-892 *infra*. But an examination of some of the rules shows that in some cases the rules go beyond the provisions of Court-fees Act and it is for consideration whether they are not *ultra vires* in view of the provisions of S. 9 of Suits Valuation Act.

growth or stagnation of litigation has not, it is submitted received that degree of consideration and scrutiny as the question deserves, at the hands of legislators. The patch work policy hitherto pursued of amending a clause here or an expression there, is of no use whatsoever where a case has been made out for a radical change in the structure of the Act. The Act as a whole must be re-cast, its provisions simplified, and the law laid down with clarity and precision.

Further, it may be noticed that though s. 12 of the Act makes the decision of the trial court decisive on questions relating to court-fees, still judicial decisions have whittled down that salutary provision and interfered in such cases in its revisional jurisdiction. "The Court-Fees Act was passed not to arm a litigant with a weapon of technicality against his opponent, but to secure revenue for the benefit of the State. (24 C. W. N. 33)." It is a purely fiscal enactment, and it is hardly expedient to allow the plea of inadequacy of court-fees to be raised as a defence by a private party, and much less for the appellate court to interfere when the trial court has decided the point. It is for the court and the officers of the Crown to safeguard the revenue. Court-fee is a Crown debt (*Per* Jackson J., in 1925 M. 433) and the question of the levy thereof is a matter that is important from the point of view of Government alone (1931 A. 659). A court-fee controversy should therefore never loom large in the adjudication of any suit, or be allowed to be agitated by the parties who would fain have this skirmish, ere they go to the real fight in the case.

While the defendant should on the one hand be precluded from taking such a plea, it is equally necessary that the revenue should not be defrauded. This will of course necessarily cast a burden on the courts to scrutinize in every case whether the proper court-fee has been paid. Lest they be lax in their duties, or follow a principle or a rule which is not quite correct, it is advantageous to have a regular check by another agency. There should be an expert corps of court-fee examiners deputed from head quarters, skilled men who will tour the Province or the Presidency, and inspect all the cases and bring to the notice of the court, instances of wrong levy of court-fee—case of deficiency, as well as excess collections. Any doubtful or controversial point can be reported to the High Court who will give a ruling thereon and settle the matter *expeditiously* and circularise all courts where the point is of general importance "to avoid causing doubts, perplexity

and uncertainty as to the law in the Courts which are bound to accept such decisions as their guide" (72 *All. 129*). In this manner there will be co-ordination of work, uniformity of application of the rules, and prevention of the leakage of revenue. At first the work of the inspecting staff will be the detection of loss of revenue, and gradually it will become more and more a preventive measure, which cannot obviously be computed as so many rupees, annas and pies recovered. As their activities increase, it would educate the staff of the subordinate courts, and the periodical inspections will keep them always on the alert, as will be evidenced by the dwindling number of detection of cases of collection of inadequate court-fee. As a financial proposition it will also be a success, as prevention is better than cure. But to make this check efficient there must be a perfected system as a centralised institution, manned by an expert staff and directed by a trained responsible officer at the head. This is not an innovation. In the Registration Department for instance, there is a periodical inspection and a systematic examination of the adequacy of stamp-fee in every document that has been registered and court-fee revenue is certainly in no way of lesser importance or magnitude than stamp revenue, or for the matter of that, any other kind of revenue.

It is also high time for the authorities to examine the question of valuation of suits, the principles that are to govern it, and the rules determining the jurisdiction of courts and promulgate a set of rules under the ample powers vested both in the Local Government and the High Court under the provisions of the Suits Valuation Act, that will dispel the cloud of uncertainty that now shrouds the topic, and make the law more rational and logical than it is at present.

The pious hope has been expressed ever and anon by the several High Courts, by one learned Judge after another that various portions of the Act may well be reconsidered or amended. That its provisions have provoked sharp conflict of views will be apparent from even a cursory reading of this commentary. In August, 1916, the Government of India addressed the Local Governments, proposing certain amendments in the Act and asking for suggestions. No immediate action however was taken by the Government of India upon the opinions received. In 1920, under the Devolution Rules, "Judicial Stamps" became a provincial reserved subject; and in 1922 and 1923 eight local Legislatures amended Schedules to the Act and also certain provisions in the Act itself, in order to raise additional revenue. The need for an amending Act in the Indian Legislature to deal with

the procedure, principle and methods of realising fees has, however, not decreased, but on the contrary has become more urgent, as it was considered desirable as far as possible to co-ordinate the law prevailing in the different Provinces. The Government of India therefore again addressed the Local Governments in 1920 and received further suggestions from them. In accordance with the replies received, it was decided to proceed with legislation on the above mentioned lines in the Indian Legislature. A New Court-Fees Bill was drafted (which I had set out in the first Edition of these commentaries and which I have now omitted as it has almost become one of archaic interest) and for reasons not quite apparent the whole matter was shelved. Still the various anomalies and defects in the Act are a never ending source of conflicting decisions, and inconvenience to Courts. It is therefore none too early to embark on legislation and put the whole Act into the crucible, and enact a fresh piece of legislation, which may be at once simple in its provisions, precise in its expressions, and fair and equitable in the levy of the fee, giving due weight to the fact that the Court-Fees Act is only a fiscal enactment, and taking care to adjust its provisions in such a manner that the incidence of taxation, while it "does not furnish the litigant with a chance of escape" (*vide* 82 I. C. 128) and thereby avoid the payment of a just fee, does not at the same time result in the denial of justice to an aggrieved party





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## ADDENDA.

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*Page 19, para. No. 5.*

**Crown debt.**—See also the recent unreported decision of the Madras High Court dated 29-10-1935 in C. R. P. No. 1115 of 1933 (cited in 69 M.L.J. Notes of recent cases, page 61), where it is held that O. 33, R. 10, C.P.C., which gives the Government a first charge on the properties, forming the subject-matter of the suit for the court-fee leviable, does not take away the right of the Government to recover it otherwise and the Government is entitled to recover it as a crown debt out of the sale proceeds of other properties in priority to another decree-holder who has attached those properties.

*Page 32, last para.*

**Taxing Judge.**—A special Bench of the High Court of Patna has now taken a different view and held that a reference to a Bench is permissible under the section. *Deoji Goa v. Tricumji Jivan Das*, 14 Pat. 658 = 1935 Pat. 396 (S. B.)

*Page 39, para. 1.*

**Enlargement of time for payment of deficit court-fee—**Where a plaint was rejected for deficiency in stamp, and the plaintiff subsequently filed an application for restoration of the suit and paid the deficiency of court fee, the Court has power to give credit to the court-fee already paid and is not compelled to require the plaintiff to pay full court-fee as for a fresh plaint. *Bacham Singh v. Dasarath Singh*, 1935 A. L. J. 1127 = 1935 All. 985.

*Page 42, line 8.*

**Where payment is made after expiry of time granted.**—See also *Singasan Tewari v. Gaya Tewari*, 16 Pat. L. T. 385 = 1935 Pat. 201, as to the effect of acceptance of deficit court-fee.

*Page 44, 4th para.*

**Where application is refused.**—Where a court rejects an application for permission to sue *in forma pauperis* the court can grant time for payment of court-fees on the plaint. *Jagadeshwari Debee v. Tinkarhi Bibi*, 62 C. 711. But where an application to sue *in forma pauperis* filed on the last day of limitation was rejected and the plaintiff did not ask for time nor was he granted time within which he could file a properly stamped plaint, a suit filed by a properly



stamped plaint subsequently could not relate back to the date of filing the application to sue *in forma pauperis*. *Krishna Ayyangar v. Janaki Ammal*, 42 L. W. 655 = 1935 Mad. 878.

*Page 46, 1st para.*

**Pauper appeal.**—See also *Shco Shankar v. Ram Dei*, 1935 O. W. N. 162 = 1935 Oudh 231, holding that the Court can allow payment of court-fee after rejecting the application for permission to appeal *in forma pauperis*. The Rangoon High Court has held that the Court need not automatically pass an order granting time while dismissing the application for leave to appeal *in forma pauperis*. *Vertannes v. Lawson*, 13 Rang. 50 = 1935 Rang. 336.

*Page 63, para. 1 and page 585, para. 4.*

**Suit for reduction of maintenance.**—*Rajammal v. Thyagaraya Ayyer*, 69 M. L. J. 203 = 42 L. W. 42 = 1935 Mad. 655, is a recent Madras decision on the point, according to which, the suit is incapable of valuation falling under Art. 17-13 corresponding to Art. 17 (6) of the main Act.

*Pages 83, 356 and 587.*

**Written statement claiming separation of defendant's share.**—See also 16 Lah. 901.

*Page 87, line 5, and page 97, line 22.*

**Whether prayer for consequential relief necessary.**—See also *Bishan Sarup v. Musa Mal*, 1935 A. L. J. 869 = 1935 All. 817 (F. B.), where the suit was for declaration that certain sale deeds were null and void as against the plaintiffs.

*Page 106, line 20.*

See also *Aijaz Ahmad v. Nazirul Hasan*, 1935 All. 849, holding that the plaintiff cannot give any arbitrary valuation and the Court is not bound to accept such valuation.

*Page 106, 4th line and page 120, para No. 4.*

Where the plaintiff in a suit for declaration and injunction chooses to value the relief at a certain figure, for the purposes of jurisdiction, he is bound to pay court-fee on the same amount. *Jani v. Bishan Singh*, 1935 Lah. 698. See also *Ram Chhabila v. Sat Narain*, 1935 A. L. J. 1319, holding that in a suit for declaration and injunction regarding the plaintiff's exclusive right to sit at a particular ghat and to take '*dan dachhina*' for *shankalap*, court-fee should be

paid on the amount mentioned as the value of the declaratory relief for purpose of jurisdiction.

*Page 107, 2nd para.*

**S. 7 cl. iv, (c), proviso—Suit for declaration and refund of money illegally collected.**—A suit for declaration by a mittadar that in respect of certain lands in his mittha he is entitled to take water from the Cauvery river free of irrigation cess and for refund of a sum of money alleged to have been illegally collected from him, falls no doubt under s. 7 cl. iv (c), but the proviso to that clause has no application and the suit can be valued at the amount of money claimed in the plaint. For the application of the proviso, the dispute should in some sense relate to the title to immoveable property. In this case, there is no dispute about the plaintiff's title to his mittha. Nor is the plaintiff seeking a declaration even in respect of a right of easement in the strict sense. He is merely seeking for an immunity from assessment and the relief sought in the suit cannot be said to be with reference to immoveable property. Further the words "the relief sought" in the proviso must be read as relating to the words "consequential relief" in s. 7 cl. (iv) (c) of the main Act and the consequential relief in the present case does not relate to immoveable property at all, but is only a claim for recovery of money. *Gurunatha Chettiar v. The Secretary of State*, C. R. P. No. 204 of 1935 (Madras) decided on 18-11-1935.

*Page 108, 1st line.*

[After s. 7 cl. iv (c)].—So also the Lahore High Court, see *Rattan Lal v. Allahabad Bank, Ltd., Lahore*, 16 Lah. 752.

*Page 113, end of 1st para.*

*Balireddi v. Khatipul Sah*, 69 M. L. J. 458 = 42 L. W. 860 = 1935 Mad. 863, is another authority for the position that a suit for cancellation of a document and for recovery of possession falls under s. 7 cl. iv-A and not under s. 7 cl. v, as the specific provision in s. 7 cl. iv-A, relating to suit for cancellation of document excludes the applicability of the general provision in s. 7 cl. v. In this case, it was held as pointed out in foot-note at p. 115 that such a suit has to be valued according to the market value of the properties and not according to the method prescribed in s. 7 cl. v.

*Page 118.*

**Suit for injunction.**—In a suit for injunction, the fact that the question of title may have to be incidentally gone into in deciding whether an injunction can be given or not is not any justification for

holding that the suit is for declaration of title and for injunction. Where the suit is for a permanent injunction to restrain the villagers of a certain village from quarrying or removing stones etc., without paying the necessary fees to the plaintiff and obtaining a license, and there is only an allegation relating to the cause of action, namely, that the plaintiff has a right to the property and the right has been infringed, it does not amount to a prayer for declaration as to title. There can be no objection to the maintainability of the suit in that form. *Al. V. R. Ct. Veerappa Chettiar v. Arumachalam Chetti and others*, C. R. P. No. 700 of 1935 (Mad.) decided on 8-11-1935.

*Page 125, end of 1st para.*

Where in a suit for account brought against the guardian for the years when he was in management of the plaintiff's properties, a specific claim is made for a certain amount which was really lent out of the plaintiff's estate by the defendant on a pronote taken in his own name and in satisfaction of which the defendant subsequently got a sale deed of certain lands, no separate court-fee is payable for the claim and the proper course is to treat it as an item in the account to be rendered. C. R. P. No. 1807 of 1934 (Mad.) decided on 28-10-1935 (69 M. L. J. Notes of recent cases, p. 58).

*Page 126, para 2.*

**Valuation in account suits.**—Under O. 7, R. 2, C. P. C., the plaintiff has to make a valuation of his claim only approximately and not with any certainty and the approximation may be a rough and ready approximation such as a plaintiff in any given case is able to give. *Atma Ram Charan Das v. Bisheshar Nath Dina Nath*, 1935 Lah. 689. In this case the plaintiff stated in the plaint that a sum of Rs. 8,000 was due to him from the defendants, but valued the suit only at Rs. 500. The valuation was held to be according to law. *Ibid*,

*Pages 132 and 139.*

**Appeal by defendant against a preliminary decree in account suit.**—According to the decision of the majority of Judges of the Spécial Bench of the Patna High Court in *Deoji Goa v. Tricumji Jivan Das*, 14 Pat. 658 = 1935 Pat. 396 (S. B.), a defendant appealing against a preliminary decree in a suit for accounts is not bound by the valuation given by the plaintiff and is entitled to place his own valuation upon the relief which he seeks. But the valuation he places should not, by the decisions of that court, be an arbitrary amount

and the court is not precluded from deciding on sufficient materials that the appeal has been under-valued and calling upon the appellant to correct his valuation and pay additional court-fee. James, J., observes in this case that a defendant appealing from the preliminary decree should not be permitted to value his appeal at anything less than the valuation of the plaint, where he is appealing from the whole decree, unless he can demonstrate that there is valid ground for holding that the plaint was deliberately over-valued, and considers that the casual remark of Lord Tomlin, made in the course of argument in the Privy Council case reported in 56 I. A. 232 ought not to be treated as if it were a part of the considered judgment ultimately delivered by the Judicial Committee, and that the decisions in 9 Rang. 165 and 56 Mad. 705 do not warrant a revision of the view expressed in 10 Pat. 458, which was based on the decision of the Full Bench of the Madras High Court in 39 Mad. 725.

*Page 148, last para.*

The United Provinces Government have recently re-issued the notification referred to herein, with the result that the decision in 55 All. 531, referred to in the paragraph has now become obsolete. See No. 32 of Reductions and Remissions in United Provinces printed at p. 775, *infra*.

*Page 168, para 3, and page 582, para 1.*

**Suit for recovery of a matam.**—In a suit to recover possession of a site and building on the allegation that the building was built by the plaintiff's ancestors for being used as a rest house for shelter by pious men amongst Nattukottai Chetties and for keeping certain things which are usually taken on the occasion of the procession of a local deity, that the plaintiff is the hereditary trustee and that the defendant is in wrongful possession of the property, it has been held, following the decision in *Syed Mahomed Gouse v. Government*, 48 M. L. J. 571 = 22 L. W. 163, cited at p. 582 and distinguishing the decision in *Rajagopala Naidu v. Ramasubramania Ayyar*, 46 Mad. 782 (F.B.) cited at p. 584 *infra*, that the property sought to be recovered is a house within the meaning of S. 7, cl. v, and should be valued according to the market value of the property and that the question as to whether the plaintiff has any beneficial interest in the property or the question whether the property is alienable has nothing to do with the question of court-fee. *Somasundaram Chetti v. Chidambaram Chetti*, alias *Kannappa Chetti*, 42 L. W. 765.

*Page 170, 1st para.*

In a suit for recovery of the plaintiff's share of the property sold, for arrears of Government revenue court-fee need be paid only on the value of the plaintiff's share of the property. The amount which the property fetched in the sale cannot be taken into account. *Panchamdeo Singh v. Kuldip Sahay*, 16 Pat. L. T. 845 = 1935 Pat. 459.

*Pages 176-179*

**Suit for redemption and surplus profits.**—In *Pothanna v. Satyanandachariu*, 60 M. L. J. 698 = 33 L. W. 785 = 1931 Mad. 479, it has been held that a suit for redemption of a usufructuary mortgage with a claim for recovery of surplus profits is still a suit for redemption and court-fees are payable only on the principal amount of mortgage under S. 7, cl. ix and no court-fees need be paid on the surplus profits claimed.

*Page 271, end of 2nd para.*

This view has been recently followed by Varadachariar, J., in an unreported case C. R. P. No. 490 of 1935 decided on 29.11.1935 (69 M. L. J. Notes of recent cases, p. 84).

*Page 288, end of 1st para.*

The point has been raised recently in the Madras High Court but the Court being of opinion that the question of category in which the suit ought to be placed is also a question of valuation and that the language employed by the Full Bench in 4 M. L. J. 183 may need reconsideration have referred the matter to a Full Bench. (69 M. L. J. Notes of recent cases, p. 77). In this case, the question is whether the suit is to be treated as falling under s. 7 cl. iv (b) where court-fee has to be paid on the value stated by the plaintiff in his plaint or as falling under Art. 17-B of Sch. II, as being incapable of valuation and not otherwise provided for in the Act. This question may in one sense be treated as a question of valuation but there may arise cases as stated in the commentaries in the body of the book where the question which in the opinion of the appellate court has been wrongly decided cannot at all be deemed to be one of valuation. For instance, a question may arise, as to whether a suit is one to set aside a summary decision of a court falling under Art. 17 (1) of Sch. II or whether it must be treated as one for declaration falling under Art. 17-A (1). Supposing in such a suit, the properties forming the subject-matter of the suit are correctly valued for jurisdiction purposes at an amount

an excess of Rs. 10,000, but a court-fee of Rs. 15 has been collected by the lower court under Art. 17 (1) and the appellate court thinks that the suit falls under Art. 17-A (1) and a court-fee of Rs. 500 should be paid, (for an instance of such a suit, see 69 M. L. J. Notes of recent cases, p. 88 cited below) what is the position? The question cannot be considered to be one of valuation in any sense of the term because there is no dispute as to value, which is the same, whichever of the above two provisions of the Act is applicable to the case. Again, take a suit for cancellation of a certain sale deed executed by the plaintiff on which a fixed court-fee has been collected by the lower court under Art. 17-A (1) and the appellate court considers that *ad valorem* fee should be paid under s. 7 cl. iv-A. Supposing that the plaintiff has valued the suit at the amount of the consideration of the sale deed, there can be no question of valuation which is the same under either of the above provisions while court-fee payable varies according as the suit falls under one or the other provision. Another instance where a question of court-fee may arise in the appellate court without involving a question of valuation is where the lower court has failed to apply the provisions of s. 17 and collect separate court-fees as for distinct subjects in a multifarious suit. In such a case the question relates only to the method of calculation of court-fees and is not one of valuation. In all these kinds of cases, it may not be possible to apply s. 12 and in view of the absurdity of the position referred to in the body of these commentaries, it is highly desirable that the section should be suitably amended.

*Page 302, 4th para.*

**Inherent power to grant refund.**—See also *In the matter of Kumudh Nath Das Saha*, 39 C. W. N. 107†, holding that in cases which are not covered by any express provisions of the Act, the High Court has inherent powers to direct a refund of court-fee, if obvious injustice has been done. The principle underlying the refund of court-fees seems to be that Government should not profit by the mistake of a litigant or of court as to the amount of court-fees payable and in cases of such mistakes, the court should order refund. *Indu Bhushan Roy v. Secretary of State*, 62 C. L. J. 298 = 1935 Cal. 707. Where however a litigant has paid fees which he was bound to pay under the law, the court by ordering refund under its inherent power cannot indirectly exempt him from the obligation imposed on him by the statute and thereby nullify the provisions of S. 6 of the Act, unless it is covered by S. 13, 14 or 15. *Ibid.* The decision in *Galstaun*

v. *Raja Janaki Nath Roy*, 38 C. W. N. 185, was dissented from in this case but as the facts were somewhat distinguishable from those of that case, there was no occasion for a reference to a Full Bench.

*Page 372, last para.*

**Property held with general power to confer beneficial interest.**—There is some conflict of decisions on the point whether such property is liable to probate duty. The exemption given in Annexure B of Sch. III, would not strictly cover such property and so far as Madras is concerned, the decision in 25 M. 515, holds the field. See discussion at p. 490, *infra*.

*Page 337, line 8.*

**Balance due on dealings.**—A claim for the charges of sending registered notice in a suit for recovery of money in respect of dealings need not be charged to court-fee separately under S. 17 and court-fee need be paid only on the aggregate amount claimed. Referred Case No. 10 of 1934 (Madras) decided on 21-11-1935.

*Page 411, 14th line.*

**Appeal relating to future interest.**—The Lucknow High Court has held that in an appeal relating to future interest, *ad valorem* court-fee should be paid on the amount of interest claimed or decreed up till the date of the presentation of the appeal. *Mohammad Sadiq Ali Khan v. Niaz Ahmad*, 157 I. C. 633 (Oudh).

*Page 457, para 5.*

S. 10 of the General Clauses Act has no application and a review application filed on the re-opening day must bear full court-fee if the court was closed on the 89th day.

*Page 500, last para.*

**Pauper application for succession certificate.**—An applicant for a succession certificate can be considered to be a "pauper" only if he is not possessed of sufficient means to enable him to pay the court-fee on the application for succession certificate. The deposit required under s. 379, Succession Act, cannot be considered to be the "Court-fee payable on the plaint" or in the case of application for certificate, on such application, for the purpose of determining whether the applicant is a "pauper". *Mt. Ehatishammunnissa v. Mir Hudi Ali*, 1935 All. 735. It was also doubted whether s. 141 C. P. Code, makes the general provisions of the Code applicable to proceedings for the grant of succession certificates under the Succession Act of 1925. *Ibid*. But compare the unreported decision of the Madras High Court in Application No. 2925 of 1930 commented on at p. 386 *infra*.

*Pages 562 and 568*

**Art. 17 (1) and Art. 17-A (Art. 17 (3) of the main Act).**—The plaintiff alleging to have become the owner of a shrotriern by virtue of s. 53-A of the Transfer of Property Act, by reason of a contract entered into with the defendants and possession taken thereunder, applied to be recognised as a landholder under s. 3 (5) of the Madras Estates Land Act. The Deputy Collector rejected the application. He thereupon filed a suit for setting aside the said order and paid a fee of Rs. 15 on the footing that the order of the Deputy Collector was a summary decision of a Revenue Court within the meaning of Art. 17 (1). But the court negatived this contention and held that the suit was in substance one for declaration chargeable to a fee of Rs. 500, the value of the subject-matter of the suit exceeding Rs. 10,000. C. R. P. No. 1333 of 1935 decided on 6-12-1935 (69 M. L. J. Notes of recent cases, p. 88).

*Page 584, end of para No. 8.*

The plaintiffs in a suit framed under s. 92, C. P. C., are not entitled to claim against strangers to the trust either a declaration of title or possession or any other relief. But a stranger to a trust who receives money or property from the trustee, which he knows to be part of the trust estate, and to be paid or handed to him in breach of the trust is a constructive trustee and a suit against him is maintainable under s. 92, C. P. Code. In such a suit therefore it is not necessary for the plaintiff to pay *ad valorem* court-fee. *Abdul Majid v. Shaikh Aklitar Nabi*, 39 C. W. N. 1103=1935 Cal. 805.

*Page 594.***Jurisdiction value in a claim suit under O. 21, R. 58.—**

The decision in *Arumuga Mudaliar v. Venkatachala Pillai*, 56 Mad. 716, cited at pp. 594 and 601, that the suit to set aside a claim order relating to land is one "relating to land" within the meaning of s. 14 of the Madras Civil Courts Act has been recently followed in C. M. A. No. 8 of 1934 decided on 11-9-1935 (69 M. L. J. Notes of recent cases, p. 24) and the decision in 50 Mad. 646 cited at length at pp. 597—601 distinguished.

*Page 623.*

Under s. 9 of the Suits Valuation Act, rules may be framed usefully with regard to suits which are not capable of being easily valued. The Legislature has provided that in certain classes of such



suits, the plaintiff is to fix his own value (*vide* s. 7 cl. iv) and courts have been accepting such value though it may be arbitrary and inadequate, in the absence of clear rules laying down a standard of valuation in such cases (*vide* 61 Cal. 796 F. B. cited at p. 69 *infra*). Suits other than those mentioned in s. 7 cl. iv would fall under Sch. II, Art. 17 (6) if it is not possible to estimate at a money value the subject-matter in dispute in them. Such for instance are suits for partition between co-tenants, suits for registration of documents, suits for restitution of conjugal rights, etc. While in most provinces, the High Courts have not framed rules with regard to these classes of suits, which alone seem to be contemplated by s. 9 of the Suits Valuation Act, some courts have gone too far and have framed rules, with regard to suits which are specifically and clearly provided for in the Act itself. The Act provides a fixed fee for a suit to set aside an adoption or to establish an adoption (*vide* Art. 17 (v) and (iii) of the main Act) and the reason probably is that the Legislature thought that an *ad valorem* fee calculated on the value of the property affected by the suit would be a hardship. This fixed fee has been arbitrarily raised in Lahore and Oudh by rules being framed fixing the value in such suits at a particular amount (Rs. 200 in Lahore—Rs. 400 in Oudh), though there is no departure in principle from that contained in the Act itself. The Nagpur Court has gone one step further and directed an adoption suit should be valued at the market value of the property affected by the suit, subject to a minimum of Rs. 400 and *ad valorem* court-fees paid on it. In effect the rule provides that instead of a fixed fee of Rs. 10 (now raised to Rs. 15) prescribed in the Act for such a suit, an *ad valorem* fee has to be paid on the value of the property affected by the suit, subject to a minimum of Rs. 30. The validity of this rule has been called in question more than once and though there was some difference of opinion, the rule has been upheld by the Judicial Commissioner's Court of Nagpur (*vide* 43 I. C. 64; 1930 Nag. 23; 1930 Nag. 73). In this connection it may be worth while to note that the Legislature of the Central Provinces has re-stated the position as to the fees leviable in adoption suits by the amending Act of 1935. In view of this, the whole position may well be re-considered by the newly constituted High Court for the Province.

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# THE COURT-FEES ACT (VII of 1870).

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# THE COURT-FEES ACT

## (ACT VII OF 1870).

[11th March, 1870.]

### CHAPTER I.

#### PRELIMINARY.

Short title.                    1. This Act may be called the  
COURT-FEES Act, 1870.

Extent of Act.                It extends to the whole of British  
India ;

Commencement of Act        And it shall come into force on the  
first day of April, 1870.

#### COMMENTARY.

**Statement of Objects and Reasons.**—For the Statement of Objects and Reasons, *see* Gazette of India, 1869, Part V, p. 57 and for Proceedings in Council, *see ibid*, 1869, Supplement, pp. 1179 and 1452; *ibid*, 1870. Supplement, pp. 52, 378, 421, 427 and 434. *See also* Appendix *infra*.

#### Rules framed by the High Courts.

**Madras.**—*See* the Civil Rules of Practice and Circular Orders, Vol. I, Part II, Chap. I and the High Court Appellate Side Rules.

**Bombay.**—*See* the Manual of Circulars of the High Court of Bombay, 1925, Chapters XI and XIII.

**Calcutta.**—*See* the General Rules and Circular Orders of the High Court of Calcutta, Vol. I, Chap. V.

**Lahore.**—*See* Rules and Orders of the High Court of Lahore 1928, Vol. III, Chapters XIII and XIV. *See* generally the Rules and Orders issued by the several other High Courts. The relevant portions of all the Rules issued by the several High Courts are extracted and set out in the Appendix *infra*.

**Amendments.**—The Court-Fees Act has been amended by several later Acts for a list of such Acts and the extent of the amendments both by the Imperial and Provincial Legislatures *see* "Table of Repeals and Amendments", *ante*.

**Local Amendments.**—By the Devolution Act (XXXVIII of 1920) the various Provinces have been empowered to fix the Court-Fees in their respective provinces. By virtue of the said powers the various provinces have enacted several Amending Acts which have modified the main Act in varying degrees. S. 80-A of the Government of India Act lays down that the local legislature may repeal or alter any law of any authority in British India subject to the proviso therein contained. *In the goods of Thomas Williams*, 75 I. C. 466, it was held that the Bengal Court-Fees Act (IV of 1922) was not *ultra vires*.

### Extent of application.

**(1) British India.**—The Act extends to the whole of British India.

There is no definition of the expression in this Act. Consequently we have to turn to the General Clauses Act X of 1897. British India is defined by S. 3, cl. 7 of that Act as "All territories and places within Her Majesty's dominions, which are for the time being governed by Her Majesty through the Governor-General of India or through any Governor on any other officer subordinate to the Governor-General of India."

Aden is within British India (Aden Laws Regulation, 1891, S. 2) but not Singapore (Straits Settlement Act, 1866, S. 1), nor the Civil Station at Wardhan, *Emperor v. Chiman Lal*, 17 I. C. 534; nor the Kathiawar States, *Hemchand v. Azam Sakar Lal*, 8 Bom. L. R. 129.

**(2) Certain specified areas.**—This Act has been declared to be in force—

- in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), s. 4 (1), Bur. Code;
- in British Baluchistan, by the British Baluchistan Laws Regulation (1 of 1890), s. 3, Bal. Code;
- in the Santhal Parganas, by the Santhal Parganas Settlement Regulation (3 of 1872), as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (3 of 1899), Ben. Code, Vol. I;
- in the sub-division of Angul, by the Angul District Regulation, 1894 (1 of 1894), s. 3, Ben. Code, Vol. I.

It has also been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874) to be in force in the following Scheduled Districts, namely:—

- the District of Hazaribagh, *see* Gazette of India, 1881, Pt. 1, p. 507;
- the District of Lohardugga (now the Ranchi District, *see* Calcutta Gazette, 1899, I, p. 44; the District of Lohardugga then included the present District of Palamanu, separated in 1894), *see* Gazette of India, 1881, Pt. I, p. 508;

the District of Manbhoom, *see* Gazette of India, 1881, Pt. I, p. 509;

the Pargana Dhalbhoom in the District of Singbhoom, *see* Gazette of India, 1881, Pt. I, p. 510;

the Scheduled Districts in Gangam and Vizagapatam, *see* Gazette of India, 1898, Pt. I, p. 869;

the Tarai of the Province of Agra, *see* Gazette of India, 1876, Pt. I, p. 505.

It has been extended by notification under S. 5. of the same Act to the Kolhan in the district of Singbhoom, *see* Gazette of India, 1907, Pt. I, p. 655, and under ss. 5 & 5-A of that Act to the following Scheduled Districts, namely :—

The Garo Hills District, the Khasi and Jaintia Hills District, the Naga Hills District, the North Cachar Sub-division of the Cachar District, the Mikir Hill Tract in the Nowgong District and the Dibrugarh Frontier Tract in the Lakhimpur District, provided that the Act does not apply to natives of these districts and tracts who are assessed to house-tax except in such places and cases as the Deputy Commissioner may withdraw from the operation of the exemption, *see* Assam Gazette, 1897, Pt. I, p. 861; Gazette of India, 1884, Pt. I, p. 164; the Lushai Hills, with the same proviso, *see* Gazette of India, 1901, Pt. I, p. 913, and Assam Gazette, 1904, Pt. II, p. 787.

It has also been applied to the Baluchistan Agency territories by the Baluchistan Agency Laws Law, 1890, s. 4 (4), Bal. Code.

The Act came into permanent operation in Aden on 1st April, 1876, *see* Bombay Government Gazette, 1876, Pt. I, p. 956.

It has been declared inapplicable to proceedings before officers making a settlement, and in certain other cases under the Santhal Parganas Settlement Regulation (3 of 1872), s. 8, as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (3 of 1899), Ben. Code, Vol. I.

The Act has been amended in Upper Burma by the Upper Burma Civil Courts Regulation, 1896 (1 of 1896), s. 36 as amended by the Upper Burma Civil Courts (Amendment) Regulation, 1903 (5 of 1903), Bur. Code; in the Punjab, by the Punjab Courts Act, 1884 (18 of 1884), Punjab and N. W. Code; and Lower Burma by the Lower Burma Courts Act, 1900 (VI of 1900), s. 47.

The amount of fees payable in certain cases in the Province of Agra under s. 170 of the Agra Tenancy Act is to be computed as in the 4th Schedule to the Act, *see* U. P. Act 2 of 1901, U. P. Code, Vol II.

This Act does not apply to applications under s. 105 (1) and (2) of the Bengal Tenancy Act, 1885 (VIII of 1885), *see* sub-s. 3 of s. 105 of that Act, Ben. Code, Vol II.



**(3) Native States.**—The Governor-General in Council acting under the Foreign Jurisdiction and Extradition Act has passed orders in Council in his executive capacity applying the provisions of this Court-Fees Act to the Hyderabad Assigned Districts, the Hyderabad Residency Bazars Cantonment of Secunderbad and the Civil and Military Station, Bangalore.

In the State of Mysore this Act is in force by virtue of the provisions in the Instruments of Rendition, dated 1st March 1881, whereby the Acts then in force in the State were continued to be in force.

**(4) Military Courts of Requests.**—This Act does not apply to such courts. See Statement of Objects and Reasons.

**(5) Colonial Courts of Admiralty.**—Under the Colonial Courts of Admiralty (India) Act, 1891 (Act XVI of 1891) suits instituted in the Colonial Courts of Admiralty at Rangoon, Aden or Karachi State shall, unless the jurisdiction of the Courts is exercised in any manner relating to the slave trade, be leviable under Ch. III of this Act.

**(6) Certain other Acts.**—There are special provisions regarding Court-Fees in the Madras Hindu Religious Endowments Act, the Presidency Small Cause Courts Act, the Bengal Tenancy Act, the Land Acquisition Act, the Agra Tenancy Act, etc.

**History of legislation relating to the levy of Court-Fees.**—The origin of Court-Fees is succinctly set out in the report of the Commissioners appointed to consider the reforms of judicial establishments in the year 1856 as follows:—"No institution fee has ever been paid in the Supreme Court, nor under the original system of Lord Cornwallis was there any such fee in the courts of the Company. The State defrayed the expenses of all the judicial establishments. An institution fee in the case of civil suits was first established by Bengal Regulation XXXVIII of 1795, not as a source of revenue, but as appears from the preamble to the Regulations, for the purpose of preventing vexatious litigation. By Bengal Regulation VI of 1797, the institution fees were converted into stamp duties. The preamble there assigns the same object, but adds also another reason that of increasing the public revenue. The last purpose is the only one mentioned in the Bengal Regulation I of 1814 which further regulates these payments." There were several Regulations and Acts relating to the Court-Fees in all the three Presidencies.

**Bengal.**—In Bengal there were Bengal Regulation X of 1797, II of 1798, I of 1814, XXVI of 1814, IV of 1816, XV of 1816, XIV of 1824, II of 1825 and the Consolidating Bengal Regulation X of 1829. They were followed by Regulations VIII of 1831 and XV of 1845.

**Bombay.**—In Bombay, the Regulations were VIII of 1802, XIV of 1815, VII of 1816, IV of 1817, I of 1827 and XVIII of 1827.

**Madras.**—The earliest Regulation in Madras was Regulation III of 1782 followed by Regulations IV, V, VIII and XVIII of 1808, II of 1816 and II and VI of 1817.

The Stamp Act XXXVI of 1860 was the first general Act of the Governor-General-in-Council relating to judicial and non-judicial stamps and repealed all the several regulations in force in the three Presidencies. This Act was again repealed by Act X of 1862. A Stamp Commission was appointed and Act XXVI of 1869 was passed based on the report of the said Commission.

The present Court-Fees Act (VII of 1870) was passed in order that for the future there may be no confusion between stamp revenue proper, namely, non-judicial and the revenue derived from the judicial stamps which was designated Court-Fees.

In 1920, under the Devolution Rules "Judicial Stamps" became a provincial reserved subject; and in 1922 and 1923, eight local legislatures amended the sections and schedules to the Act in order to raise additional revenue. In about the year 1924, a new Court-Fees Bill was drafted, referred to the Select Committee and finally it was not proceeded with.

### General principles of interpretation of statutes.

#### (1) Plain meaning of the section to be given effect to.—

The legislature must be intended to mean what it has plainly expressed and consequently there is no room for construction. *R. v. Bambury*, 1 A. and E. 142. The meaning and intention of a statute must be collected from the plain and unambiguous expressions used therein rather than from any notions which may be entertained by the Court as to what is just or expedient. *Gwynne v. Burnell*, 51. P. R. 43. When once the meaning is plain, it is not the province of a court to scan its wisdom or its policy. *Maxwell's Interpretation of Statutes*, 6th Edn. Ch. I, Sec. 2. The duty of the Court is not to make the law reasonable but to expound it as it stands. *The Merle*, 31 L. T. 447. In the words of Lord Halsbury the statute must receive a construction according to the plain meaning of the words and it is arguing in a vicious circle by assuming an intention apart from the language of the instrument itself and having made that fallacious assumption to bend the language in favour of the assumption so made. *Leader v. Duffey*, 31 A. C. 294; *Scale v. Rawlins*, 1892 A. C. 342.

Where the wording of the section is clear, it is futile to waste time to consider what the policy is on which that section is based. *Chettiar v. Munnee*, 6 Rang. 533. See also (1928) M. W. N. 291. See also *Azees Ahmad v. Choti Lal*, 50 All. 569.

(2) Language and intention.—If the words go beyond what was probably the intention of the legislature, effect must nevertheless be given to them. *Notley v. Buck*, 8 B. and C. 164. It is undesirable to import words into a section when the court's duty is to

apply the language of the section to the facts before it. *Majidan v. Sabir*, 107 I.C. 674; *Thukoji Rao Holker v. Sackabai*, 31 Bom.L.R. 7; *Tata Hydro Electric Agency, Ltd. v. Commissioner of Incometax, Bombay*, 58 Bom. 361.

**(3) General and particular intention.**—It is a well-established principle that where a general intention is expressed by the legislature and also a particular intention which is incompatible with the general one, the particular intention is considered an exception to the general rule. This rule applies where the general and special provisions are contained in the same statute or different statutes. *Khangul v. Lakha Singh*, 1928 Lah. 609 (F. B.); *Bahadur Lal v. Judges of Allahabad High Court*, 55 All. 432 (F. B.)

**(4) All words to be given effect to.**—A construction which would leave without effect any part of the language should be rejected unless justified. *Maxwell's Interpretation of Statutes*, 6th Edn., page 33. See also *Vasanbai v. Radhubai*, 108 I. C. 657.

**(5) Construction leading to absurdity to be avoided.**—Construction leading to absurdity must be avoided. That construction alone should be adopted which is in consonance with common-sense and which does not lead to absurd results or enormous difficulties. *Moideen Pichai v. Timmervelly Mills Co.*, 1928 Mad. 571; *Subramania Aiyer v. Swaminatha Chettiar*, 1928 Mad. 746.

**(6) Anomalous construction to be avoided.**—Construction leading to anomaly to be avoided. *Dial Singh v. Gurudewara*, 9 Lah. 619.

**(7) Harmonious construction.**—The section should be harmoniously construed. It is the duty of the Court to construe the provisions of the statute in such a manner as not to allow one provision to stultify the other and, if possible, the provisions of one section should be read as a qualification of the other, so that some effect furthering the intention of the legislature may be given to each. *Emperor v. Jaiard*, 111 I. C. 865—22 S. L. R. 349; *Bimleshwari Prasad Upadhyay v. Krishna Murari*, 1934 Oudh 145.

**(8) Courts should not supply omissions.**—Courts should not supply omissions in an Act. They cannot add or amend the defective phraseology of the legislature and by construction make up the deficiencies left there. *Gurudial Singh v. Central Board*, 1928 Lah. 337.

**(9) Previous state of the law.**—It is a sound rule of interpretation to take the words of the statute as they stand without any reference to the previous state of the law on the subject. Where it is impossible to arrive at a conclusion without considering what the law was previous to the particular enactment the prior state of the law might be referred to. *Abdul Rahim v. Syed*, 55 Cal. 519 (P. C.) and *Brojo Lal v. Budhnath*, 55 Cal. 551.

**(10) Reference to English law.**—See *Mussamat Ramanandi v. M. T. Kalavathi*, 7 Pat. 221—1928 Pat. 2. Where there is a

positive enactment of the Indian legislature, the proper course is to examine the language of that statute uninfluenced by the English law upon which it may be founded. *Hemraj v. Krishna Lal*, 111 I. C. 8; *Sukban v. Emperor*, 1929 Lah. 344; *Diwan Chand v. Manuk Chand*, 1934 Lah. 809.

**(11) Proceedings in Council.**—Courts when interpreting the Act cannot seek assistance of the debates in the Legislative Council or the report of the Select Committee. *Gurudial Singh v. Central Board*, 1928 Lah. 337. Legislative proceedings cannot be referred to determine the plain meaning of the Statute. *Sarat Sundari v. Uma Prasad*, 8 C.W. N. 578; *Queen Empress v. Bal Gangadar Tilak*, 23 Bom. 112. See also *Rex v. West Riding of Yorkshire County Council*, (1906) 2 K. B. 676; *Katamreddi Rami Reddi v. Sreeramulu Reddi*, 1933 Mad. 120; *Barisal Co-operative Central Bank, Ltd. v. Benoybhushan Gupta*, 1934 Cal. 537; *Shidramappa v. Neelavabai*, 57 Bom. 377.

**(12) Aim and scope of the Act as a whole to be considered.**—To arrive at the real meaning it is always necessary to get an exact conception of the aim, scope and object of the whole Act. *Maxwell's Interpretation of Statutes*, 6th Edn., p. 39. The intention should be collected from the whole statute. *Ram Sahai v. Debi Din*, 1926 Ail. 617; *Emperor v. Bastin*, 1934 Bom. 213.

**(13) Rules and forms under the Act.**—General rules and forms made under the authority of an Act which enacted that they should have the same force as if they had been included in it have also been referred to for the purpose of assisting in the interpretation of the Act. *Maxwell's Interpretation of the Statute*, 6th Edn., p. 65. But see *Sheikh Intaz v. Din Nath Sarkar*, 53 Cal. 615; *Hemandas Sataondus v. Bhai Nihchaldas*, 1934 Sind 110.

**(14) Repealed Acts.**—The language and provisions of expired and repealed Acts on the same subject and the construction that they have authoritatively received are also to be taken into consideration. Where part of an Act has been repealed, it may although not of operative force, still be taken into consideration in construing the rest, for it is a part of the history of the new Act. *Maxwell's Interpretation of Statutes*, 6th Edn., pp. 65 and 67.

**(15) Similar Acts.**—A construction which has been put upon Acts of similar scope and similar subjects, even though the language should be different, may for a similar reason be referred to *Maxwell's Interpretation of Statutes*, 6th Edn., pp. 68, 70. But where the Acts are not in *pari materia*, it is fallacious to take the construction which has been put upon one as controlling the construction of the other. *Stanford v. Roberts*, (1901) 1 Ch. 440. See also *Dayachand v. Hemchand*, 4 Bom. 515; Halsbury's Laws of England, Vol. 27, pages 138—140. The Limitation Act and the Court-Fees Act are not in *pari materia* and there is no affinity between them and, however convenient it may be to place the same meaning on nearly

the same words occurring in the Court-Fees Act and the Limitation Act, it is not proper to call in the latter in aid of the construction of the former. The subject of Court-fees has no real or necessary connection with the limitation of suits and proceedings to which the other is exclusively devoted. See *Assan v. Pathumma*, 22 Mad. 494, where Justice Subrahmanya Aiyar has observed as follows:—"No doubt it is true that in construing an Act provisions of other statutes which are in *pari materia* may be referred to. But when the two enactments are not in *pari materia*, how can one be taken to control and qualify the other? Nothing can be more dangerous to construe one statute by another especially when we consider the mode in which the statutes are framed at the present time." See also *Knowles & Sons v. Lancashire Yorkshire Railway Co.*, L. R. 14 App. Cases 248, where Lord Halsbury has observed thus: "I do not think one gets any help from the construction of other statutes passed at different times and in pursuance of different lines of thought." One fiscal enactment cannot be construed by way of analogy of another fiscal enactment. *In re Sarojanashimi*, 20 C. W. N. 1125.

**(16) Stare decisis.**—Where for a series of years a law which imposes a heavy tax upon litigation has received a particular interpretation in favour of the suitor and a course of practice has prevailed for years throughout the whole country in accordance with that interpretation, courts of justice ought to be slow in changing that interpretation or course of practice to the prejudice of the suitor. *Ijjathulla v. Chandara Mohan*, 34 Cal. 945; *Bidhata Ray v. Ram Charitra Ray*, 12 C. W. N. 37. It is a well settled principle of interpretation that Courts in construing a statute will give much weight to the interpretation put upon it at the time of its enactment and since by those whose duty it has been to construe, execute and apply it. *Baleswar v. Bhagirathi*, 35 Cal. 701. Decisions which are not clearly erroneous and mischievous and which have affected the conduct of the community for a long time should not easily be overruled. *Kedar Nath v. Maharaja Manendra Chandra Nandi*, 11 C. L. J. 106. But practice cannot make lawful that which is unlawful however long it may be. *Buvvasi Lal v. Dayasankar*, 13 C. W. N. 815.

Procedure followed by Revenue authorities is not binding on Civil Courts. *Killing Valley Tea Co. v. The Secretary of State*, 32 C. L. J. 421.

**(17) Hardship of literal construction.**—Edge, C. J., has observed as follows in *Balkaran v. Govindanuth*, 12 All. 129: "We cannot allow any question of hardship to influence us in applying the principles of construction to Acts of the Legislature where the wording of those Acts is plain and unambiguous. We are not responsible for those Acts and to put upon them a construction different from that which according to the principles of construction upon which a Court of Justice must act, they bear, would be to depart from our duty as judges and to arrogate to ourselves the power and functions of the legislature. We have to construe the Acts of legisla-

ture as we find them. Whether we approve of them or not we have no power to alter or amend them. We have no power to read into the . . . Court-Fees Act or any other Act, or Code, a section or word which it does not contain . . . We have to justify our decisions not by extraneous considerations such as that of hardship but by distinct reference to the section or article of the Code upon the proper construction of which our decision depends. This is a duty which it is most necessary for us carefully to attend to if we are to avoid causing doubts, perplexity and uncertainty as to the law in the Courts which are bound to accept our decisions as their guide". See also *Corporation of Calcutta v. Kumar Arun Chandra Singha*, 60 Cal. 1470 = 1934 Cal. 862; *In re Lloyds Bank Ltd.*, 58 Bom. 152; *Basheshar Das v. Diwan Chand*, 1933 Lah. 615.

**(18) Summary.**—The salient principles of construction are admirably summarised by Maxwell in his *Interpretation of Statutes*, 6th Edn., p. 93 as follows:—

"It is to be taken as a fundamental principle that the plain intention of the legislature as expressed by the language employed is invariably to be accepted and carried into effect whatever may be the view of the judicial interpreter of its wisdom or justice. If the language admits of no doubt or secondary meaning, it is simply to be obeyed. It admits of more than one construction, the true meaning is to be sought not on the wide sea of surmise and speculation but from such conjectures as are drawn from the words alone and something contained in them; that is from the context viewed by such light as its history may throw upon it and construed with the help of certain general principles and under the influence of certain presumptions as to what the legislature does or does not generally intend. But the language of a statute must not be strained in order to make it apply to a case to which it does not legitimately in its terms apply, on account of the supposed intention of the legislature and the theory that supposed intention can only be effectually carried out by giving to the words a meaning which they do not naturally bear."

### **An Act and its component parts as aids to its interpretation.**

**(1) Title.**—The title of a Statute is an important part of the Act. *Ambler v. Bradford Corporation*, (1902) 2 Ch. C. A. Appeals at p. 594. It may be referred to for ascertaining the general scope of a Statute. *Furton v. Thorley*, (1903) A. C. 447. The title can be referred to to explain an enacting clause which is doubtful. *Harrochand v. Shoorodharmi*, 9 W. R. 402. The title is a key to open the meaning of the Act and the mischief it was intended to remedy. *Salkeld v. Johnstar*, 5 Q. B. 313.

**(2) Headings.**—Headings prefixed to sections are regarded as preambles to those sections. *Fletcher v. Birkenhead Corporation*, (1907) 1 K. B. at page 218 and *Janaki Singh v. Jagannath*, 44 I. C. 94; *Emperor v. Ismail Sayed Sahib*, 57 Bom. 537 (F. B.). But headings

cannot be construed as a limitation upon the exercise of the powers given by the express terms of the Act. *Abdul Rahim v. Bombay Municipal Commissioners*, 42 Bom. 462.

**(3) Marginal notes.**—The side note although it forms no part of the section is of some assistance inasmuch as it shows the drift of section. Per Collins, M. R., in *Bushell v. Hammond*, (1904) 73 L. J. K. B. 1005. See also *Lahore Bank v. Kidarnuth*, 31 I. C. 146; *Ramsaran Das v. Bhagvat Prasad*, 1929 All. 53; *Emperor v. Ismail Sayed Sahib*, 57 Bom. 537 (F. B.).

Reading of a section of a Statute by referring to the marginal note is not a legitimate canon of interpretation. *In re P. Natesa Mudaliar*, 51 M. L. J. 704; *Corporation of Calcutta v. Kumar Arun Chandra Singh*, 60 Cal. 1470.

**(4) Proviso.**—The proviso is part of the section to which it is attached, but it is something subordinate to the main clause and as a general rule what is contained in the proviso need not be imported by implication into the clause which would tend to extend its scope beyond what is warranted by the natural meaning of the words. *Mrs Annie Besant v. Government of Madras*, 39 Mad. 1085; *Zamindar of Challapalli v. Somayya*, 39 Mad. 341. A Proviso cannot extend substantive provision, *Ramchander v. Gowri Nuth*, 53. C. 492.

**(5) Punctuation.**—Punctuation must be taken into consideration in construing an Act of the Indian Legislature. *Taylor v. Breach*, 36 Bom. 186; *The Secretary of State v. Kale Khan*, 37 Mad. 113.

**(6) Comma.**—It is not part of a statute. *Lewis Pugh v. Ashutosh*, 1929 P. C. 69.

**(7) Schedules.**—The schedules annexed to an Act and the headings under which they are placed are parts of the enactment but they are not to be taken into consideration if the language of the enactment is clear. *Altap Ali v. Jamsur Ali*, 93 I. C. 909 = 1926 Cal. 638.

## Construction of the Court-fees Act.

**(1) A fiscal enactment.**—The Court-Fees Act being a fiscal enactment ought to be literally construed. *Subramanya Ayyar v. Rama Ayyar*, 54 M. L. J. 67. It must be construed strictly and in favour of the subject. *Sri Krishnachandra v. Muhabir Prasad*, (1933) A. L. J. 673 = 1933 All. 488 (F. B.); *Beliram v. Isar Doss*, 8 Lah. 730 = 1928 Lah. 113. It is essentially a fiscal enactment. Its primary object is to protect the revenue and not to coerce the subject. *Chandramani v. Basdeo Narain*, 49 I. C. 442. The Act was passed not to arm a litigant with a weapon of technicality against his opponent but to secure revenue for the benefit of the State. *Mahomed Elliyas v. Rahima Bibi*, 56 M. L. J. 302 = 1929 Mad. 191. The enactment should be construed strictly and precisely. *Emperor v. Soddanand*, 8 Cal. 259; *Sirdar v. Ganapath*, 17 Bom. 56; *Rustomji v. Kala Singh*, 43 I. C. 383; *Manendra v. The Secretary*

of State, 34 Cal. 257; *Mylapore Fund v. The Madras Corporation*, 31 Mad. 408; *Ram Sumran Prasad v. Govind Das*, 2 Pat. 125 = 1922 Pat. 615 (F. B.). The subject cannot be taxed except by clear and unambiguous language in the section. *In re Chin Ahaing*, 24 A. C. 823; *Noksing v. Bholusing*, 1930 Nag. 73.

**(2) To be strictly construed.**—Statutes which impose pecuniary burdens should be strictly construed. *Thaddeus v. The Secretary of State*, 81 I. C. 751; *Bhola Ram & Sons v. Emperor*, 15 Lah. 501; *Commissioner of Income-tax, Bihar and Orissa v. Kameswar Singh*, 13 Pat. 336 (S.B.). In cases where the section is not clear the court is bound to decide the matter in favour of the subject. *Dayachand v. Hemchand*, 4 Bom. 515; *Dy. Commissioner of Singbham v. Jagadish Chander*, 62 I. C. 513. Of two equally possible and reasonable constructions of a fiscal enactment, that which is more favourable to the subject should be adopted. *Commissioner of Income Tax v. Ramaswami Chettiar*, 56 M. L. J. 141 (F. B.) = 1929 Mad. 60. It is a taxing statute and has to be construed with strictness. *Shihan v. Abdul Alim*, 1930 Cal. 787. Court-fees due to Government is a Crown debt. *Collector of Kistna v. Sreeramamoorthy*, 1925 Mad. 433. Whether court-fee should be paid or not is important from the view point of Government alone. *Bombay, Baroda and C. I. Railway v. Mithu*, 1921 All. 659.

It is a rule of construction peculiar to fiscal enactments that they must be very strictly construed so as not to impose an unnecessarily heavy burden on the subject. *Noksing v. Bholusing*, 1934 Nag. 73. See also *Beli Ram v. Ishar Das*, 8 Lah. 730. But when there is no reasonable doubt as to the meaning of the words of the statute, the rule as to construing taxing statutes in the strictest sense in favour of the subject cannot apply. *Sivapatha Mudaliar v. Sikander Rowther*, 56 M. L. J. 37 = 1929 Mad. 38.

The Court-Fees Act which is a fiscal enactment must be strictly construed. The special provisions of the Land Acquisition Act should not be extended by analogy to vary the provisions of the Court-Fees Act. *Thakan Chaudhuri v. Lachmi Narain*, 152 I. C. 244 = 15 Pat. L. T. 548 = 1934 Pat. 571 (S. B.)

The principle that a statute which imposes a duty must be strictly construed does not extend to mere matters of procedure for collecting the impost. *Gopalaswami Chettiar v. Secretary of State*, 65 M. L. J. 518 = 1933 Mad. 748.

**(3) Contrary view.**—Doubt has been expressed as to whether a different rule of construction of the sections should be followed in the case of fiscal enactments. *Vide* observation in *Attorney-General v. Carlton Bank*, (1899) 2 Q. B. 158. "In the course of argument reference was made to supposed special canons of construction applicable to Revenue Acts. For my part, I do not accept that suggestion. I see no reason why special canons of construction should be applied to any Act and I know of no authority for saying"



that a taxing Act is to be construed differently from another Act. The duty of the Court is in my opinion in all cases the same whether the Act to be construed relates to taxation or to another subject, viz., to give effect to the intention of the Legislature as that intention is to be gathered from the language employed having regard to the context in connection with which it is employed. The court must no doubt ascertain the subject-matter to which the particular tax is by the statute intended to be applied, but when once that is ascertained it is not open to the Court to narrow or whittle down the operation of the Act by seeming considerations of hardship or of business convenience or the like. Courts have to give effect to what the Legislature has said.' But the general consensus of opinion in India seems to take a view favourable to the subject and give as lenient a construction as possible to fiscal enactments.

**(4) Whole Act to be considered.**—The true mode of interpreting a statute like the Court-Fees Act which has been repeatedly amended is not to consider individual sections but to take them as a whole and to give effect to the legislative intent upon a particular matter. *In the goods of Harriot Kerr*, 18 C. L. J. 308 = 21 L. C. 502.

**(5) Special provision applicable in preference to general.**—In such an Act as the Court-Fees Act, if there is a special provision which applies to a particular case then that special provision must be applied by the court rather than some general classification in which the suit may also be included which may be more favourable to the plaintiff. *Venkatasiva Rao v. Venkatanarasimha Satyanarayanamurthy*, 63 M. L. J. 764 = 1932 Mad. 605.

**(6) Method provided by the Act.**—Where there is in the Act itself a special rule as to valuing suits for court-fees, that method should be followed. *Venkata Narasimha Raju v. Chandrayya*, 53 M. L. J. 267 = 1927 Mad. 825.

**(7) Preamble.**—The Court-Fees Act has no preamble. Justice Mahmood observes in *Balkaran v. Govindanath*, 12 All. 129: "I had difficulty in considering the Statute, Act VII of 1870, known as the Court-Fees Act which begins without a preamble and leaves it to the judges to decide what its objects were and to gather those objects from the enacting clauses." This echoes the sentiment expressed by Lord North in *Wigram v. Ryer*, 36 Ch. Dn. 17: "It is a very lamentable way of legislating that we should be driven to get at the meaning of Acts by removing difficulties by construction rather than that the intention of the legislature should be clearly expressed on the face of the Act."

**Object and scope of the Act.**—The object of the Act is to lay down rules for the collection of one form of taxation and that is also the scope of the enactment. *Mahomed v. Nabian Bibi*, 8 All. 282. This Act has no preamble whereby its purposes can be ascertained. *Gavaranga v. Botokrishna*, 32 Mad. 305 (F.B.). Still the Court-Fees Act is, as its name imports, an Act primarily

passed for the purpose of prescribing the fees which are to be paid in respect of documents to be used in courts. It also provides in the schedules for the stamps to be used in certain offices other than offices of Courts of Justice. It not only prescribes the fees, but provides how those fees are to be ascertained, how the questions as to the sufficiency of fees on documents so far as courts are concerned are to be determined, and the conditions under which only the documents included in the first and second schedules to the Act may be received, filed, registered or used as the case may be in courts in India. It specifies the documents which need not be stamped under that Act for the purpose of being used in courts. *Balakran v. Govindanath*, 12 All. 129 (F. B.).

The Court-Fees Act is purely a fiscal enactment and has no bearing on the question as to which is the proper court for the institution of the suit having regard to the value of the property. *Inayat Husain v. Bashir Ahmad*, (1932) A.L.J. 416 = 1932 All. 413. Its primary object is to protect the revenue and not to coerce the subject. *Chandramani v. Bas Deo*, 49 I. C. 442. The Court-Fees Act was passed not to arm a litigant with a weapon of technicality against his opponent, but to secure revenue for the benefit of the State. This is evident from the character of the Act, and is brought out by Sec. 12 which makes the decision of the first court as to value final as between the parties, and enables the court of appeal to correct any error as to this, only where the first court decided to the detriment of revenue. Where therefore the defendant in a suit seeks to utilise the provisions of the Act not to safeguard the interests of the State but to obstruct the plaintiff, the court will be slow to assist the objector. *Rachappa v. Siddappa*, 43 B. 507 (P. C.). See also *Mahomed Elliyes v. Rahima Bee*, 29 L. W. 42.

**The scheme of the Act.**—“The Court-Fees Act of 1870, as amended by subsequent legislation is divided into 7 chapters, which, as indicated by their headings purport to deal with different subject-matters.

The following extract from the judgment of Mullick, J., in *Krishna Mohan v. Raghunadan*, 4 Pat. 336, clearly set out the scheme of the Act. “The Court-Fees Act in spite of its obscure drafting seems to me to lay down the following scheme for the taxation of plaints and memorandum of appeal. Suits and memoranda of appeal are classified according to the subject-matter, or the subject-matter in dispute, or the nature of the relief claimed. Schedules I and II endeavour to give a comprehensive classification of the various kinds of suits with reference to those heads of classification. The Schedules also provide that the proper fee payable on some documents shall vary according to the court in which they are filed, and that in regard to others there shall be no such variance. Again in Schedule II, it is declared that the plaints and appeals in the suits therein specified shall bear the fixed fees prescribed while in Schedule I, are specified various suits in which the plaints and appeals bear an *ad valorem* fee.

The procedure to be followed when a plaint or a memorandum of appeal is filed in a court other than a Chartered High Court or a Presidency Small Cause Court is as follows: "The court will first of all decide into which of the various classes enumerated in schedules I and II the document falls. This has some times been called deciding the category of the suit. The process involves the construction of the plaint, and a determination of the real relief prayed for. It is essentially judicial and requires the court to be astute to see that the reliefs are not so cast as to secure an evasion of the Court-Fees Act. A familiar instance is when declarations are only asked, when consequential relief is the real claim. The court will then proceed to see whether the proper fee is a fixed fee under Schedule II or an *ad valorem* fee under Schedule I. No question of valuation arises if the fee is a fixed fee; but if an *ad valorem* fee is leviable then the court will proceed to value the subject-matter or the subject-matter in dispute, or fix the amount of the relief claimed according to rules for computation set out in ss. 7 and 8 of the Act. If a local or further investigation is necessary, the court may proceed under s. 9. This computation is the valuation referred to in s. 11 of Chapter III and the court's adjudication on a question relating thereto is final in respect of a plaint or memorandum of appeal under the first clause of s. 12."

**Retrospective effect :—**Retrospective operation ought not to be given to a statute unless the intention of the legislature that it should be so construed is expressed in plain and unambiguous language. *Young v. Admas*, 1898 A. C. 469. See also *Harendra Kumara Rai v. Secretary of State*, 1928 Cal. 808; *Pramathanath Pal v. Saurav Dosi*, 47 C. 1108. Grant of Probate for example is governed by the law in force at the time of the original grant, and is not subject to any higher rate introduced by interim legislation. *Swarnamayi v. Secretary of State for India*, 22 C. L. J. 370.

**(1) Amendment of the Act.**—Where it was notified that a new scale has been prescribed for court-fees for suits filed on the original side of the High Court of Madras to come into force from the date of publication in the Fort St. George Gazette, and the notification was received in the office at 5 P. M. after office hours the question arose for consideration whether the new scale of fees applied to plaints filed on that date. It was held that it did. *In re Court-fees* O. S. 513/32 and others, 46 M. 685.

For the effect of amendment of the Act between the date of decree and application for review, see commentaries under that heading under Sch. I, Art. 5.

**(2) Defective presentation of appeal.**—Where a memorandum of appeal was returned for want of a copy of the decree appealed against and the Court-Fees Act was passed meanwhile the fee payable is under that Act. *In re Sreenath*, 7 W. R. 462.

Where an appeal was improperly presented during vacation, the same will be deemed to have been presented on the reopening day and

when the Court-Fees Act was meanwhile amended, the fee payable is as per the amended provision. *Ananda Ram v. Ram Gulam*, 2 Pat. 264.

**(3) Insufficient stamp.**—Where a plaint was presented while the old Act was in force but insufficiently stamped, and by the time the same was detected, the new Act has been passed, the deficiency is to be made up only as per the old Act. *Tara Prasanna v. Nrisinga Moorari*, 51 C. 216.

**(4) Return of plaint.**—Where a court returned a plaint for want of jurisdiction, and before the same could be re-presented to the proper court, the Act was amended, fee is payable as per the amended Act. But the plaintiff should be credited with the fee originally paid. *Bimala Prasad v. Lal Moni*, 1926 Cal. 355

**(5) Crown debt.**—Court-fees form a Crown debt and the Crown is entitled to precedence over other creditors. *Collector of Krishna v. Sreeramamoorthy*, 1925 Mad. 433.

**(6) Devolution of interest pendente lite** makes no difference in the court-fee payable; inasmuch as the transferees merely represent the interest of their vendor, the original plaintiff. During the pendency of a partition suit, the plaintiff sold a portion of the property to others who were added as co-plaintiffs. It was contended that the nature of the suit had been altered and that since the co-plaintiffs are not in possession they must pay *ad valorem* court-fee, but the court negatived the contention. *Harihar Prasad v. Maheswari Prasad*, 3 Pat. 654.

2. In this Act, unless there is anything repugnant in the subject or context, "Chief controlling Revenue-authority" means—

"Chief Controlling Revenue-Authority" defined.

- (a) in the Presidency of Fort St. George and the territories respectively under the administration of the Lieutenant-Governors of Bengal and the North-Western Provinces and the Chief Commissioner of Oudh—the Board of Revenue;
- (b) in the Presidency of Bombay, outside Sindh and the limits of the town of Bombay—a Revenue Commissioner;
- (c) in Sindh—the Commissioner;
- (d) in the Punjab and Burma, including Upper Burma—the Financial Commissioner; and

- (c) elsewhere—the Local Government or such officer as the Local Government may, by notification in the official Gazette, appoint in this behalf.

#### COMMENTARY.

**Previous law.**—The present s. 2 was added by s. 2 of the Court-Fees (Amendment) Act, 1901 (10 of 1901). The original section relating to repeal of enactments was repealed by the Repealing Act, 1870 (14 of 1870).

**Local Amendment.**—A new section has been substituted for this section by the Bengal Court-fees Amendment Act (VII of 1935) See appendix.

**The Provinces specified in the section.**—There is no territory under the administration of a Lieutenant Governor of Bengal now. In lieu of that, we have the Bengal Presidency and the Province of Bihar and Orissa. North West Provinces and Oudh are now known as the United Provinces of Agra and Oudh, and the Lieutenant-Governor and Chief Commissioner as the Lieutenant-Governor of those provinces. See Proclamation No. 596 P., dated the 22nd March, 1902, Gazette of India, 1902, Pt. I, p. 228, and the United Provinces Designation Act, 1902 (7 of 1902). In the Punjab there are two Financial Commissioners.

**Chief Controlling Revenue Authority.**—For such authority appointed for—

(1) the Island of Bombay, See Bombay Government Gazette, 1902, Pt. I, p. 35.

(2) Baluchistan, See Gazette of India, 1908, Pt. I, p. 389.

(3) the Assam Valley Districts and certain parts of the district of Cachar, See E. B. & A. Gazette, 1905, Pt. I, p. 5.

(4) Central Provinces—The Financial Commissioner is the authority in the C. P. & Berar. See C. P. Gazette, 1916, Pt. I, p. 1573.

**The Bengal Tenancy Act.**—Fees on processes issued under the Act are governed by the rules framed by the High Court of Calcutta under s. 20 of the Court-Fees Act.

## CHAPTER II.

### FEES IN THE HIGH COURT AND IN THE COURTS OF SMALL CAUSES AT THE PRESIDENCY-TOWNS.

3. The fees payable for the time being to the clerks and officers (other than the sheriffs and attorneys) of the High Courts established by Letters Patent, by virtue of the power conferred by

Levy of fees in High Courts on their original sides.

[Section 15 of the Indian High Courts Act, 1861, or Section 107 of the Government of India Act, 1915],

or chargeable in each of such Courts under No. 11 of the first, and Nos. 7, 12, 14, 20 and 21 of the second schedule to this Act annexed;

and the fees for the time being chargeable in the Courts of Small Causes at the Presidency-towns, and their several offices,

Levy of fees in  
Presidency Small  
Cause Courts.

shall be collected in manner hereinafter appearing.

#### COMMENTARY.

**Acts referred to in this section.**—See the Indian High Courts Act, 1861 (24 and 25 Vict., c. 104).

See the Presidency Small Cause Courts Act, 1882 (15 of 1882), Ch. X.

**Legislative changes.**—The words "Section 15..... of the Government of India Act 1915" were substituted by s. 2 of the repealing and amending Act XXIV of 1917.

The number '16' after '14' was repealed by the repealing and amending Act XII of 1891, as section 16 of the Act had been repealed.

**Bengal Amendment.**—The Heading of the Chapter is changed into "Fees payable in Courts and in the Public Offices" and S. 6 removed to this Chapter. See Court-fees (Bengal Amendment) Act, 1935, printed in the Appendix.

**High Court.**—This Chapter is entitled as the "Fees in the High Courts and in the Presidency Court of Small Causes" while the succeeding Chapter IV, relates to fees in *other* Courts and in public offices. This Chapter consists of 3 sections of which sections 3 and 4 above relate to the levy of fees. S. 3, paras 1 and 2 and s. 4 apply to the High Court, the former applying to its ordinary original jurisdiction and the latter to its extraordinary and appellate jurisdiction. The general statement usually made that s. 3 is not a charging section is not quite correct. Para 1 thereof no doubt saves the right of that Court to frame its own fees rules under s. 15 of the Letters Patent or s. 107 of the Government of India Act, see *Mahomed Isac v. Mahomed Moideen*, 45 M. 849=1922 Mad. 421, but para 2, at least by implication sets out the scale of fees to be levied by the High Court in specified cases, under the provisions of the Court-Fees Act. They are Article 11 of the 1st Schedule (Probates of Will and Letters of Administration) and Article No. 7 (undertaking under s. 49 of the Indian Divorce Act); No. 12 (Caveat); No. 14 (Petition in a suit under the Native Converts' Marriage Dissolution Act, (1866)); No. 20 (Petition under the Indian Divorce Act

except those under ss. 44 and 55 of that Act); No. 21 (Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1865). Thus it will be seen that even in the exercise of its ordinary original civil jurisdiction in the case of testamentary and certain classes of matrimonial jurisdiction, fees leviable under the Court Fees Act are applicable to the High Court. Subject to that exception, s. 3 of the Act is not a charging section like s. 4 that follows. For a learned discussion of this topic see the observations of Venkatasubba Rao, J., in *Abdul Hakim v. Chattanada*, 1931 Mad. 457. See also *Maung Ba Thaw v. M. S. V. M. Chettiar*, 13 Rang. 156, holding that the Court-Fees Act does not apply to cases coming before the High Court in the exercise of its ordinary original civil jurisdiction or in the exercise of its jurisdiction as regards appeals from judgments passed in such cases.

**Mode of collection of stamps.**—Chap. V of this Act deals with the mode of levying fees. So far as the High Court is concerned, they are governed by the rules framed by the High Court under s. 15 of the Letters Patent and s. 107 of the Govt. of India Act with regard to suits on the original side of the High Court and appeals therefrom. The fees shall be collected in stamps. See s. 25 and also *Krishna Mohan v. Raghunandan*, 4 Pat. 336 = 1925 Pat. 392 and also *In re Bhuvanewar Trigunant*, 52 C. 871 = 1925 Cal. 1201.

**Rules by Local Governments.** Under s. 27 the Government may make rules for regulating the supply, renewal, etc., of stamps, provided that in the case of stamps levied under s. 3, in a High Court, such rules are made with the concurrence of the Chief Justice of the High Court concerned.

**The Presidency Small Cause Courts Act (XV of 1882).**—The fees are levied under Chap. X of the Presy. Small Cause Courts Act by s. 77 thereof. Ss. 3, 5 and 25 of the Court-fees Act are made applicable also to such Small Cause Courts.

4. No document of any of the kinds specified in the first or second schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction;

Fees on documents filed, etc., in High Courts in their extraordinary jurisdiction:

or in the exercise of its jurisdiction as regards appeals from the [judgments (other than judgments passed in the exercise of the ordinary original civil jurisdiction

In their appellate jurisdiction:

tion of the court) of one] or more Judges of the said Court, or of a division Court;

or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence; or in the exercise of its jurisdiction as a Court of reference or revision;

As courts of reference and revision.

unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

#### COMMENTARY.

**Amendments.**—The words “judgment of two” were repealed, and the words “judgments (other than judgments passed in the exercise of the ordinary original civil jurisdiction of the Court) of one” were substituted by Act XIX of 1922.

**Effect of the amendment and appeals under the Letters Patent.**—It was decided by Allahabad and Patna High Courts respectively in *Bhadool Pande v. Murni Pande*, 44 A. 13=63 I. C. 318 and *Raghubar Singh v. Jethu*, 3 Pat. L. T. 194=65 I. C. 675, that no court-fee was leviable under s. 10 of the Letters Patent on an appeal from the judgment of a *single* Judge, as, in the section, as it then stood, the words used were “two or more judges.” See also *Hari Dyal v. Secy. of State*, 3 L. 420=68 I. C. 428. It was only to avoid that anomaly, that the section was amended locally in Bihar and Orissa by Act I of 1922, and in the Punjab by Act VII of 1922, whereby word “one” was substituted for the word “two” between the words “of” and “or” in para 3 of this section. Now the Central Legislature itself has amended the section carrying out the effect of the local amendments and rectifying the anomaly pointed out in the decisions quoted *supra*.

• **Scope of the section.**—The section applies to certain kinds of jurisdiction of the High Court. It applies to its

1. *Original jurisdiction.*—Extraordinary, civil and criminal.

2. *Appellate jurisdiction.*

(a) against judgments of one or more judges subject to the exception noted in para 2 of the section.

(b) Over subordinate courts.

3. *Revisional jurisdiction.*

4. *Reference.*

It does not apply to a High Court exercising.

(1) *Original jurisdiction.*—Ordinary, civil and criminal.

(2) *Appellate jurisdiction.*—In O. S. Appeals.



- (3) Matrimonial (subject to certain exceptions—*vide* rules under s. 3 *ante*.)
- (4) Admiralty jurisdiction or
- (5) Ecclesiastical jurisdiction, *see Balkaran v. Govindanath*, 12 A. 129 (F. B.); *Krishna Mohan v. Raghunanda*, 4 Pat. 336 = 1925 Pat. 392.

**Testamentary jurisdiction.**—*See* commentaries under section 3.

**Sections 3 and 4.**—When section 3 speaks of “fees payable to clerks and officers” it is a fee payable to the Crown, and not any perquisites receivable by the officers. When a person tenders a stamped document to the Registrar of the High Court and asks him to enter his appeal it is clear he is within the meaning of the Act paying a fee to an officer of the High Court. 45 M. 849.

“The distinction between sections 3 and 4 must be carefully observed. Whereas the latter section prescribes the court-fee, the former, subject to an exception \* \* \* merely regulates the mode of collection \* \* \*. In certain cases coming before the High Court the Court-Fees Act itself prescribes the fee leviable, S. 4, S. 3 Cl. 2. In other cases the Court-Fees Act lays down only the mode of collecting the court-fee, S. 3, Cl. 1. In the case of the Presidency Small Cause Courts also, it merely prescribes the mode of collecting the fee, S. 3, Cl. 3. *Abdul Hakim v. Chattanadha*, 1931 Mad. 457.

**Memorandum of appeal.**—It is a document under Schs. I and II of the Act, and this section read with s. 28, makes it clear that an insufficiently stamped memorandum of appeal cannot be received by the High Court. *Ram Sahay v. Kumar Lakshmi Narayan*, 42 I.C. 675; *Balkaran v. Govinda Nath*, 12 A. 129 (F. B.) The section is imperative, and such a defective memorandum should not be filed. *Lakshmi Narayan v. Chowdary*, 19 I. C. 971; *Khatumannessa Bibi v. Durjodhene Roy Choudhury*, 61 Cal. 663 = 38 C. W. N. 650 = 1934 Cal. 659. Where a memorandum of appeal is filed without a duly stamped decree appealed against, the appeal is liable to be rejected, if the deficiency is not made up within the period of limitation for filing the appeal, *Shabadal v. Hukam*, 1924 Lah. 401; *Imam Din v. Sahib Din*, 147 I. C. 343 = 35 P. L. R. 142 = 1934 Lah. 272.

There is a discussion of the question whether a memorandum of appeal is a document liable to be stamped under this section, in the Full Bench case of *Krishna Mohan v. Raghunandan Pandey*, 4 Pat. 336 at p. 349. Miller, C. J., observes as follows:—“A difficulty arises owing to the wording of Sch. I, Art. I which prescribes the stamp fee for, *inter alia*, a memorandum of appeal. The language of Art. I of Sch. I would appear to exclude such documents when presented in a High Court. The documents there mentioned are those presented in any Civil or Revenue Court *except those mentioned in s. 3*. The

Courts mentioned in s. 3 are High Courts and certain of the Small Cause Courts. S. 4 carries the case no further, for the prohibition in that section against the reception of documents extends only to documents of the *kinds* specified in either of the Schs. \*\*\*\*. If the documents specified in Art. 1 of Sch. I are those presented in courts other than High Courts and Small Cause Courts, there would appear to be no provision for stamping a memorandum of appeal presented in a High Court. The Act can hardly have been intended to exclude so important a document as a memorandum of appeal presented in a High Court \*\*\*. It seems that the intention was to include a memorandum of appeal presented to the High Court amongst the documents referred to in s. 4, the words "documents of any of the kinds specified in the first or second schedules" being a description of the documents mentioned in the schedules without reference to the words of exclusion appearing in Art. 1, Sch. I. Or it may be that Sch. 1, Art. I was intended to exclude from the documents there mentioned only those presented to the High Courts in their original sides and the Small Cause Courts. In either case the wording is unfortunate."

**Appellant's right to appeal against whole decree though the real object is to contest only a part thereof.—**

It is an anomaly of the law of Court-Fees that a person who appeals against a part of the decree should have to pay more court-fee than the one who appeals against the whole of it. But a litigant is entitled to appeal against the whole of a decree though he intends to attack only a part of it. *Nizar Muhammad v. Kalaram*, 9 Lah. 563 = 1929 Lah. 190.

**Judgments.**—Under s. 96 of the Code of Civil Procedure an appeal is provided for from every *decree* passed by any Court exercising original jurisdiction. Under Cl. 15 of the Letters Patent, it is provided that an appeal shall lie from the *judgment*, etc., of one Judge of the High Court, etc. The words used both in the Code and in the Letters Patent may be noticed, the former providing for appeals from the decree while the latter speaks only of appeals from judgments agreeably to the English practice.

**Defective presentation.**—The presentation of an insufficiently stamped memorandum of appeal is no proper presentation. *Ex parte Desai*, 4 Bom. H.C.A.C. 145; *Sahadat v. Hukan*, 1924 Lah. 401.

Where a pleader a few days before the expiry of the period of limitation files the memo. of appeal on a court-fee of 8 annas though it should have been written on court-fee of Rs. 90, as his client had not come to make any arrangements for court-fees, the Court is justified in rejecting the appeal. *Atmaram v. Kasturchand*, 1930 Nag. 224. But see 1 Lah. 234 and 38 B. 41 and O. VII, r. 11 (c) and s. 149, C. P. C. Though s. 149, C. P. Code, which was subsequently introduced in the Code of Civil Procedure, vests in the Court a discretion to allow appeals with insufficient court-fee to be received when proper court-fees are paid within the time allowed by

court, the discretion should be exercised on correct judicial principles, and not in a way so as to nullify the express provisions of s. 4 of the Act. *Khatumannessa Bibi v. Durjodhene Roy Choudhury*, 61 Cal. 663 = 38 C. W. N. 650 = 1934 Cal. 659. Where insufficient Court-fee is paid on a memorandum of appeal and the mistake is not a *bona fide* one, the question regarding the fee payable being very simple, time cannot be granted under s. 148, C. P. C., and the appeal is liable to be dismissed as time-barred. *Ram Rabhaya v. Vaid Prakash*, 1934 Lah. 424. See also under s. 6 on the point. O. VII, r. 11, C. P. C. does not apply to a plaint which bears no stamp. Such a plaint must be rejected in accordance with the provisions of ss. 4 and 6 of the Court-Fees Act. 1930 Nag. 224, *supra*.

**Received.**—A document is first received and then filed, exhibited on proof or recorded as the case may be. Under this section a court is not bound even to receive a defectively stamped document. *Ram Saehay v. Pandit Lakshminarayan*, 42 I. C. 675 = 3 Pat. L. J. 74.

**Furnished.**—Refers to the grant by Court. A succession certificate will not be issued unless the proper stamp is furnished. Though a will is proved, no probate will be issued till the requisite stamp duty is paid. *Alamelu v. Surya Prakasa Mudaliar*, 38 Mad. 988. For the meaning of the word 'Furnished' see *In the matter of Dampet*, 17 W. R. 489. See also commentaries under s. 6 *infra* regarding the meanings of the words, *filed*, *exhibited*, *furnished*, *recorded*, etc.

**Collection of deficit court-fee by stamp reporter after the appeal is admitted and registered.**—Where the law was changed after the decision of the Stamp Reporter as to sufficiency of stamp on a memorandum of appeal, by reason of a Bench decision of the High Court, the Stamp Reporter can take action to levy additional court-fee under the later decision even though the appeal has been admitted and registered already. *Sideshwari Prosad v. Ram Kumar Rai*, 12 Pat. 694 = 144 I. C. 684 = 1933 Pat. 234.

**Agency Appeals.**—An appeal to the Government of Madras under the Agency Rules framed under Act XXIV of 1839, is not chargeable under this Act. *Court-fee Reference*, 22 Mad. 162.

**Reference under Income-tax Act.**—As no mention of the court-fee payable on a reference under S. 66, Income-tax Act is to be found in Schs. I and II, Court-Fees Act, S. 4 of the Act does not apply to documents produced in a reference to the High Court under S. 66, Income-tax Act and therefore no court-fee is chargeable on such documents. *Commissioner of Income-tax, Bombay v. Khemchand Ramdas*, 145 I. C. 254 = 1933 Sind 148.

**Extraordinary Original Civil or Criminal Jurisdiction.**—Clause 13 of the Letters Patent deals with such Civil and Clause 24 deals with such Criminal jurisdiction respectively. The former gives the power to the High Court "to remove and try and determine as a court of extraordinary original jurisdiction any suit being or falling

within the jurisdiction of any Court whether within or without \* \* the Presidency of Fort William, Fort St. George, etc., subject to its superintendence when the said High Court shall think proper to do so, either on the agreement of the parties to that effect or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court." Under Cl. 24 the High Court "has extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any court subject to the superintendence of the said High Court, and shall have authority to try at its discretion any such persons brought before it on charges preferred by the Advocate-General or by any magistrate or other officer specially empowered by the Government in that behalf.

**High Court Fees Rules—Validity of:—**When a suit is transferred under Cl. 13 Letters Patent of the High Court of Madras the Court-fees leviable are governed by the Court-Fees Act and not by the High Court-Fees Rules. *Varadaraja Mudaliar v. Arumugam Pillay*, 91 I. C. 751=1925 Mad. 1216. So far as the ordinary original civil jurisdiction is concerned the Court-Fees Act does not itself prescribe the fees leviable. But as regards the extraordinary original civil jurisdiction of the High Court, the Act directly applies and the High Court cannot frame rules for observance in cases falling within this jurisdiction overriding the provisions of the Act for the reason that the proviso to s. 107 of the Government of India Act lays down that the High Court's powers to frame a table of fees shall not be inconsistent with the provisions of any Act for the time being in force and s. 4 of the Court-Fees Act provides for cases arising under the extraordinary jurisdiction of the High Court. To that extent such rules are *ultra vires* of the rule making powers of the High Court. *Abdul Hakim v. Chattanada Iyer*, 1931 Mad. 457.

### **Suits transferred to High Court from--**

**(1) The Madras City Civil Court.**—In such a case the court-fee payable are those in force in the High Court as a court of ordinary civil jurisdiction. See Madras City Civil Court Act (1892). The procedure is indicated in s. 14 of that Act. The plaintiff must be given credit for the court-fees already paid in his plaint in the City Civil Court. *Abdul Hakim v. Chattanada Iyer*, 1931 Mad. 457.

**(2) The Presidency Small Cause Court.**—Here there is a distinction as regards the value of the suit. Suits below the value of Rs. 1,000 do not come within the purview of sections 39 and 40 of the Presidency Small Cause Courts Act and where such a suit is transferred to the High Court for trial the transfer must be treated as one under powers vested in the High Court under clause 13 of the Letters Patent and the jurisdiction of the High Court to try such a suit would be its extraordinary original jurisdiction conferred by the Letters Patent. The fee to be collected is under the Court-Fees Act as the High Court has framed no rules in respect of suits transferred

under the extraordinary original jurisdiction of the Court conferred either by clause 13 of the Letters Patent or section 24, C. P. C. *Varadaraja Mudaliar v. Arumugam Pillai*, 22 L. W. 15=1925 Mad. 1216. Subsequently such rules were framed, but they were held to be *ultra vires*. See *Abdul Hakeem v. Chattanada Iyer*, 1931 Mad. 457 cited *supra*.

**5.** When any difference arises between the officer whose duty it is to see that any fee is paid under this chapter and any suitor or attorney, as to the necessity of paying a fee or the amount thereof, the question shall, when the difference arises in any of the said High Courts, be referred to the taxing-officer, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the Chief Justice of such High Court, or of such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf.

Procedure in case of difference as to necessity or amount of fee.

When any such difference arises in any of the said Courts of Small Causes, the question shall be referred to the Clerk of the Court, [*Registrar* (Madras)] whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the first [*Chief* (Madras)] Judge of such Court.

The Chief Justice shall declare who shall be taxing-officer within the meaning of the first paragraph of this section.

#### COMMENTARY.

**Amendments.**—This section has been amended by the Madras Act V of 1922. The amendments have been noted in their appropriate places in the section itself.

**Scope of this section and s. 12 discussed.**—“ Clause (2) of s. 12 gives power to the High Court to determine the question of valuation in order to determine the proper fee payable upon a plaint or memorandum of appeal when the matter comes before it in Appeal, Reference or Revision. That clause relates only to a plaint and memorandum of appeal filed in the subordinate courts and does not relate to a memorandum of appeal filed in the High Court, and the power given thereunder can only be used when the question of valu-

ation is wrongly decided by the lower courts "to the detriment of the revenue" \* \* \* Under s. 12 it is merely the decision of the subordinate courts as to the valuation and not as to the category in which the suit or appeal falls, which is final, whereas under s. 5 the decision of the Taxing Officer is final, as to the amount of fee determined by him to be payable upon the memorandum of appeal and other documents filed in the High Court, no matter how he arrives at his conclusion namely by determining the valuation or the category. See remarks of Tudball, J., in *Kahunwar Karan v. Gopal Rai*, 32 A. 59." *Krishna Mohan v. Raghunanda*, 4 Pat. 336 at p. 365, 366.

The High Court may undoubtedly under the second clause of s. 12 require a party to pay an additional fee upon the plaint or memorandum of appeal in the lower court and this power is conferred on the court itself as distinguished from the Taxing officer whose powers are confined under s. 5 to the fees payable in the High Court. *Ibid* p. 352. See also *Gajendra Nath Saha Chowdhury v. Sulochana Choudhurani*, 39 C. W. N. 131; *Mithoo Lal v. Mt. Chamell*, (1934) A. L. J. 957=1934 All. 805; But see *contra*, 84 I. C. 822=22 A. L. J. 1038 cited *infra*. In *Maung Nyi Maung v. Mandalay Municipal Committee*, 12 Rang. 335=1934 Rang. 268, it has been held that s. 5 does not give the High Court Judge, deputed for the purpose of dealing with the questions of court-fees under s. 5, to decide questions with regard to sufficiency of court-fees paid in subordinate courts.

The section applies to the original side also. The taxing-officer or Judge can decide questions of fee on the original side, 45 Mad. 849; *Swaminatha v. Guruswami*, 53 M. L. J. 457=1927 Mad. 940.

**Taxing-officer.**—In the Calcutta High Court, he is the Registrar on the Appellate Side. 37 C. 914=9 I. C. 1145. In Madras the Registrar was the ex-officio Taxing-Officer. The Dy. Registrar was not the Taxing-Officer. *Ambur Ali v. Kalicharan*, 24 W. R. 258. In Madras the Master is now the taxing-officer. It is none of the duties of a Taxing-Officer to advise parties as to the fee payable. *Balkaran v. Govindanath*, 12 A. 129.

**The Taxing-officer and his jurisdiction.**—The following question was referred to a Full Bench of the High Court of Patna "Has the Taxing-officer jurisdiction to decide a question relating to valuation for the purpose of determining the amount of Court-fee payable by the appellant either on his plaint or on his memorandum of appeal under s. 5 of the Court-Fees Act?" This was answered by a majority of the Judges in the affirmative in *Krishna Mohan v. Raghunandan Pandey*, 4 Pat. 336 at pages 353, 363 and 365. *Per* Miller, C. J. "The Taxing-Officer or the Taxing Judge as the case may be is under s. 5 the proper person to determine the fee payable on a memorandum of appeal presented to the High Court and for this purpose he may investigate the question of the proper valuation of the subject-matter of appeal." *Per* Jawala Prasad, J. "Under s. 5 of the Act, it is the duty of

the officer appointed in this behalf by the High Court, say the Stamp Reporter, to see whether and what fee is payable under Ch. II upon a document filed, exhibited or recorded in, or received or furnished by the High Court. His duty is to see under what Articles of Schedules I and II, the aforesaid document falls. If it is a document with respect to which a fee is to be paid under the said Schedules it is his duty to find out the amount of the fee leviable upon it. Therefore with respect to a memorandum of appeal filed in the High Court, if the officer finds that the memorandum of appeal falls under Art. 1, Sch. I of the Act, he has to find out "*the amount or value of the subject-matter*" as stated in column 2 of the Article in order to determine the amount of fee payable under column 3 of that Schedule. In other words, he has to determine the value of the subject-matter in dispute, for without it, the amount of fee payable cannot be ascertained. Therefore the question of valuation is involved in the determination of the amount payable upon a memorandum of appeal. If the suitor contests the amount fixed by the Stamp Reporter, a difference arises between him and the officer whose duty it is to see that the proper fee is paid under Chap. II of the Court-Fees Act, upon the memorandum of appeal. When such a difference arises the question shall be referred to the taxing officer. This contest gives rise to an issue and that issue has to be determined by the Taxing-officer. The issue may be with respect to the nature of the document in order to find out in which category of the Schedule the document falls or it may be as to the value of the subject-matter in dispute upon which the amount of fee payable depends \* \* \* The power of deciding the question given to the taxing officer implies the power to make an inquiry as to the amount payable upon the document, and if the amount of court-fee payable depends upon valuation, the taxing-officer has power to inquire into questions relating to valuation."

### **Decision of the Taxing Officer.**

(1) **Decision necessary.**—To attract the operation of the section, there must be a decision by the Taxing Officer. Otherwise objection as to sufficiency of court-fees can be raised at the trial. *Jugul Pershad v. Pashu Narayan*, 37 C. 914. Where there has been no decision by the taxing officer the court is not precluded from taking notice at the hearing of the deficiency in the stamp duty. *Kandunni Nair v. Ittumui Raman Nair*, 53 M. 540=1930 Mad. 597. Where the taxing officer declines to consider the question of court-fee and to decide it, his order cannot be considered to be one under s. 5, so as to operate as a bar to the question being considered by the Court. *Abdul Samad Khan v. Arijuman Islamia*, (1933) A. L. J. 1537. A decision cannot be implied from the mere admission of a memorandum of appeal without any controversy about the sufficiency of the court-fees. *Kasturi v. Dy. Collector, Bellary*, 21 M. 269.

(2) **Nature of order of Taxing Officer.**—It is neither a decree nor an order as defined by s. 2 C. P. C., nor is his decision a decision of a Civil Court. *Balkaran v. Gobinda*, 12 A. 129.

**(3) Difference between the Taxing Officer and the party** is necessary as then alone the former will have to decide the question or refer it to a judge. If there is no difference there is no decision.

**(4) Erroneous decision.**—Even an erroneous decision of the Taxing Officer is a binding decision. *Logan Burt Khan v. Khakhan Singh*, 3 Pat. L. J. 92, but see *Anna Narayan v. Madhyama*, 67 I. C. 364; *Badsai Pershad v. Kundan*, 15 A. 117.

*Appeal or Review.*—“Where the powers of the High Court under s. 5 of the Court-Fees Act, 1870, have been delegated to the Taxing Officer or Judge, even if these officers should make a manifest mistake in the exercise of their jurisdiction, their decision is not subject to appeal or revision by the Court itself”. *Krishna Mohan v. Raghunandan Pandey*, 4 Pat. 366.

**(5) Deficiency in lower courts.**—The power is not confined merely to memorandum of appeal filed in the High Court but extends to deficiencies in stamp on a plaint or memorandum of appeal in the first appellate Court. 84 I. C. 822 = 22 A. L. J. 1038. But see 4 Pat. 336 and 39 C. W. N. 131 cited *supra*.

**(6)** Where the duties of the High Court have been delegated to the Taxing Officer and the Taxing Judge under s. 5 these officers have all the powers incidental to the discharge of those duties which the High Court itself possesses. *Krishna Mohan v. Raghunandan*, 4 Pat. 336.

### **Finality of the decision of the Taxing Officer.—**

(1) The decision is final and the court cannot consider its propriety in an appeal or revision, *Balkaran v. Govindanath*, 12 A. 126; *Rangapan v. Baba*, 20 M. 398; *Swaminatha v. Guruswami*, 105 I. C. 119; *Gangaram v. The C. C. Revenue Authority*, 52 B. 61 “S. 5 prescribes that in all High Courts there shall be first an officer whose duty it is to receive the memorandum of appeal, secondly an officer who shall be the Taxing Officer; and thirdly when the C. J. so directs a Judge of High Court who shall be appointed to determine disputes arising between the suitor and the Taxing Officer. It is not necessary to consider what would be the position if there was no Taxing Officer appointed: but the law states in clear and unequivocal language that so long as there is a taxing officer his decision shall be final as regards the amount of court-fee payable” *Per Mullick, J.*, in *Krishna Mohan v. Raghunandan*, 4 Pat. p. 336 at page 359. In the High Court at Allahabad, the Chief Inspector of Stamps is an officer whose duty it is to see that the fee is paid under Ch. II of the Act and the decision of the Taxing Officer on a difference of opinion between the Chief Inspector of Stamps and the suitor is final. *Bhagvanti v. Dhanwani*, 140 I. C. 68 = 1932 A. L. J. 244 = 1932 All. 319. The decision of the Taxing Officer is final only so far as the Court-fees payable on a memorandum of appeal are concerned. *Gajendra Nath Saha Choudhury v. Sulochana Choudhurani*, 39 C. W. N. 131.



(2) The decision is final both as to the category under which the suit falls and also on the question of valuation. *Krishna Mohan v. Raghunandan*, 4 Pat. p. 336.

(3) Before an appeal is admitted, a division bench of the High Court has no jurisdiction to re-open the valuation of an appeal made by the taxing officer. *Chandrabutti v. Gorry Lal*, 52 I. C. 508.

(4) The Taxing Officer has no power to direct an appellant to make any cash deposit as a condition precedent to the trial of any question of Court-fees. *Janak Parshad v. Askaran Parshad*, 6 Pat. 602 = 105 I. C. 742.

(5) But "the decision of the Taxing Officer is not final where he has proceeded *ex-parte* and without giving an opportunity to the suitor to show by adducing evidence or otherwise what the value of the subject-matter of the appeal is. It is essentially desirable that the Taxing Officer in determining questions of valuation should not as a rule base his decision merely upon allegations in the plaint as to the annual profits of the property to be valued. It may be that such valuation was over-estimated in the plaint as sometimes happens. \* \* \* In order to arrive at a proper decision, the parties should be called upon to procure in such manner as may be convenient such documentary or other evidence as they may be prepared to tender to enable him to decide the question." *Krishna Mohan v. Raghunandan*, 4 Pat. 336.

**Remedy against decision by Taxing Officer.**—The remedy of the party aggrieved by such a decision is to move the Board of Revenue to grant a refund.

**Refund.**—The High Court has got inherent powers to direct the Taxing Officer to issue the necessary certificate to the Revenue authorities to obtain refund of excess Court-fee paid through mistake or under order of Court. *Chandradari v. Tipen Prasad*, 40 C. 365 = 20 I. C. 498, but see 92 I. C. 626. See also 11 B. L. R. 370.

Where excess Court-fee was paid in the trial court, credit was given to it in the fee payable for the memorandum of appeal. (1886) A. W. N. p. 223.

Where owing to the erroneous order of the lower court the defendant was obliged to pay Court-fee in excess of what was really payable and though he ultimately succeeded in second appeal the High Court then did not include the excess court-fee paid by the defendant in his costs and the lower court when applied to, held it had no power in the matter it was held that the excess should be refunded. *Girish Chander Mali v. Girish Chander Dutta*, 36 C. W. N. 190.

**Taxing Judge.**—A taxing judge has no power to refer to a bench any case on Court-fees referred to him. 33 A. 20; 1924 Pat. 161. *Dhanukdari Prasad Pandey v. Ramadhikari Missir*, 12 Pat. 188.

**Deficiency of Court-Fees.**—Once the court disposes of an appeal it becomes *functus officio* and has no power thereafter to direct any party to make up any deficient court-fee. *Abdulla v. Secretary of State*, 1925 Lah. 131.

## CHAPTER III.

### FEES IN OTHER COURTS AND IN PUBLIC OFFICES.

6. Except in the Courts hereinbefore mentioned  
Fees on documents  
 filed, etc., in Mofussil  
 Courts or in public  
 offices. no document of any of the kinds specified as chargeable in the first or second schedule to this Act annexed shall be filed, exhibited or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

### COMMENTARY.

**Bengal amendment (Act VII of 1935).**—The section is transferred to Chapter II and the heading of the chapter changed into "Computation of fees." This amendment has resulted in a better classification of the sections. For the words "be paid" the words "has been paid" have been substituted. A new sub-section (2) is added to this section which reads thus :—

"(2) Notwithstanding anything contained in sub-section (1) or in any other Act, a Court may receive a plaint or memorandum of appeal in respect of which an insufficient fee has been paid, subject to the following conditions, namely :—

(a) no such plaint or memorandum of appeal shall be registered unless the plaintiff or appellant has, before such date as the Court may have fixed in this behalf paid to the Court such reasonable sum on account of court-fee as the Court may direct ;

(b) the Court shall reject the plaint or memorandum of appeal if the sum referred to in clause (a) is not paid before the date fixed by the Court."

The effect of the amendment by the addition of this sub-section is discussed below in the commentaries.

**Sections 3, 4 and 6.**—Section 3 of the Act which falls in Chapter II provides that, in respect of certain proceedings on the original side of a chartered High Court and in all suits in the small

cause courts in Presidency Towns, court-fees on plaints and applications shall be collected in the manner provided in Chapter V of the Act. This section is not a charging section but merely prescribes the mode of collection. The fees leviable on the original side of a chartered High Court and in the Presidency Small Cause Courts are prescribed by enactments other than the Court-Fees Act. Section 4 is the charging section and declares that no document that is chargeable under Schedules I and II shall be received in the High Court in exercise of certain specified jurisdictions. Chapter III deals with fees in courts and public offices other than those referred to in Chapter II. Section 6 is the charging section, and declares that no plaint or memorandum of appeal shall be received unless the court-fee has been paid thereon.

**Criminal cases.**—For an exception to the general rule that an improperly stamped document should not be exhibited or acted upon unless the proper fee is paid, see s. 33.

**Exemption.**—For cases of exemption from court-fee, see ss. 18, 19, 33 and 35.

**Reduction or remission of court-fee.**—See s. 35 of the Act and the rules framed by the Governor-General in Council and the several Local Governments set out in the Appendix. Objections to findings after remand under O. 41, r. 26 C. P. C., need not be stamped nor applications to courts not required by the Code to be in writing, *Tetty v. Administrator-General of Bengal*, 2 N. W. P. 418, nor for certificate of sale, *Hira Ambaidas v. Tekchand*, 13 B. 670, nor for refund of stamp duty, *Bhikov Mulla v. Rask Monee*, 9 W. R. 357, nor appeals under the Agency Rules in Madras. *Reference under the Court-Fees Act*, S. 5, 22 M. 162.

**Courts herein before mentioned.**—They are the High Courts, and the Presidency Courts of Small Causes.

**"Filed", "Exhibited", "Recorded", "Received", "Furnished".**

**Filed.**—The word 'file' is derived from the Latin word 'Filum' and relates to the ancient practice of placing papers on a thread or wire for safe keeping and ready reference." A paper is said to be filed when it is delivered to the proper officer and by him received to be kept on file. The origin of the term indicates very clearly that the filing of a paper can only be effected by bringing it to the notice of the officer. Filing a paper in modern usage consists in placing it in the custody of the proper officer by the party charged with the duty and the making of the proper endorsement by the officer. In the absence of a statute requiring the filing of a paper or document, it is filed in and delivered to and received by the proper officer to be kept on file. The word carries with it the idea of permanently preserving all the things so delivered and received that it may become a part of the public record. *Bowvier's Law Dictionary*.

**Exhibited.**—Exhibit means to file of record. An exhibit means a paper or writing proved on motion or otherwise.

**Recorded.**—Placed on the record and made part of the records of a suit. For instance under Order 23 Rule 3 of the Code of Civil Procedure, where the parties file an agreement or compromise, the court shall order such agreement, or compromise to be *recorded*. See also O. 21, R. 2, C. P. C.

**Received.**—Received by any court or public officer.

**Furnished.**—Granted or issued by a court or public officer. See *In the matter of Dampet*, 17 W. R. 489.

**Can an unstamped or inadequately stamped document be received in a court?**—The answer is 'No'. But the necessity to formulate such a question and consider it arises from the unfortunate wording of section 6. It lays down that no document chargeable under Schedule I or II of the Act could be *filed*, *exhibited* or *recorded* in any court or *received* or *furnished* by any public officer, etc. No doubt it appears that a court is sought to be contrasted with a public officer and they are prohibited from doing certain specified acts respectively. Are they mutually exclusive? Do or do not the words "Received" and "Furnished" apply to courts also? In section 4 all the five words of "Receiving", "Filing", "Exhibiting", "Recording" and "Furnishing" are used with reference to a court. In section 6, the three words "Filing", "Exhibiting" and "Recording" are used with reference to courts and the other two words with reference to a public officer. This would seem to suggest that the legislature did not prohibit a court "Receiving" or "Furnishing" a document for which no adequate fee has been paid. It is not the correct view. Otherwise it will lead to these anomalies.

(1) The High Court which under section 4 is prohibited from "Receiving" or "Furnishing" is in a worse position than a subordinate court, which under section 6 does not labour under this difficulty.

(2) Section 28 of the Act provides for cases where documents not properly stamped have been inadvertently received by a court or office. This implies that a court ought not to *receive* an inadequately stamped document.

(3) If the word "received" used in section 6 is not referable to courts, so also the word "furnished" could not apply. The result will be that a court could grant succession certificates, probates, etc., and furnish the same to parties, even though the proper fee is not paid by the party. But this is against section 19-I which lays down that the grant could not be made unless the "court is satisfied that the fee mentioned in No. 11 of the 1st schedule has been paid".

(4) In the list of remissions (Item No. 9) issued by the Government of India under Sec. 35 of the Act, the fees chargeable under Articles 6, 7 and 9 of the 1st schedule on copies furnished by civil or

criminal courts are exempted under certain conditions. Where is the necessity for this exemption, if there is no obligation on the court to collect the fees before "furnishing" which would be the result of the construction of Sec. 6 that the word "furnish" does not refer to courts?

A good deal of confusion is due to the loose way in which the word 'file' is used. For instance a plaint is first *presented* in a court. Under the Limitation Act it constitutes the *institution* of a suit. Section 4 of the Limitation Act requires that every suit shall be instituted within the period prescribed by that Act, and the explanation sets out that *for purposes of limitation* a suit is instituted in ordinary cases when the plaint is *presented* to the proper officer. There is thus a distinction recognised between the presentation of a plaint and its admission, after all requisite formalities including the payment of the necessary court-fees shall have been completed. *Moti Sahu v. Chatri Das*, 19 Cal. 780 at 782.

Plaints and petitions are *received* by the chief ministerial officer who *files* them if he is satisfied that they are properly stamped. *In re Lakshmi Ammal*, 1926 Mad. 96. But this process of "filing" is not a process that is gone through in the case of all documents received by a court. They are simply received and later on exhibited or recorded as the case may be. It is only in the case of a document on which the plaintiff sues (O. 7, R. 14, C. P. C.) that the party should *deliver* or *produce* the document to be *filed* with the plaint. In the majority of cases unless they are pleadings there is no separate process called the "filing" after the receipt of the documents by the court. Therefore it amounts to this. Receiving and furnishing referred to in the section do apply to courts and the words "public officer" could not be deemed to exclude the ministerial officers of courts. Of course it may be a hardship to collect court-fees on all documents received in court as soon as received, for they may not ultimately be used as evidence in cases where suits are disposed of without trial. But there is no other logical construction possible under the circumstances when sections 4, 6 and 28 are read together.

**Determination of court-fee.**—Where the allegation in the plaint is that the plaintiff is in joint possession, before the plaintiff could be called upon to pay any additional court-fee, the court ought to frame an issue on the question of joint possession alleged by him before the trial of the suit or proceed with the trial of the suit and demand the additional court-fee if and when it is found that his allegation of joint possession is not proved. *Ganga Prasad v. Bhawani Bhiku*, 1921 Oudh 174. It is desirable such questions are determined at the earliest possible moment, *Hitendra Singh v. Rameshwar*, 1921 Pat. 88 (F.B.) A Court of Justice cannot settle the question of court-fee by a compromise. Either a particular amount of court-fee is due or it is not, but there cannot be any question of compromise

between the parties and the court on the subject in the absence of any one representing the fiscal authorities. *Ghulam Mohammed v. Abdul Rashid*, 14 Lah. 558=144 I. C. 636=1933 Lah. 905.

**Admission regarding court-fee.**—An admission by a plaintiff in respect of computation of court-fees is not conclusive against him as the question is one of law and not of fact. *Girishchandra v. The Secretary of State for India*, 1928 Cal. 55. So also is admission by a party's counsel. *Suram Singh v. Sundar Singh*, 1929 Lah. 879.

See also commentaries under s. 7 *infra* under the heading "Objections as to valuation and court-fees."

**Improperly stamped documents.**—Section 28 provides that no document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped; and there is also a provision contained in the section for stamping documents inadvertently received.

**Plaint.**—The word includes a plaint though insufficiently stamped. *Assan v. Pathma*, 22 M. 464.

1. Where a plaint is written upon paper insufficiently stamped, the court is bound to give the plaintiff time to make good the deficiency. See O. VII, r. 11 (c), *C.P.C. Ram Sahay v. Kumar Lachmi*, 38 I. C. 820; *Rada Kant v. Devendra*, 49 C. 880=70 I. C. 101.

2. If the plaintiff fails to supply the requisite stamp paper within the period fixed by the court, the plaint may be rejected even after it has been numbered and registered as a suit. *Padmanand v. Ananda Lal*, 34 C. 20.

3. Where a plaint is presented on the last day allowed by the law of limitation, and is returned for the supply of the requisite stamp within a time fixed by court, and by the time the same is supplied the period of limitation expired, then too the plaint could be admitted. This is by virtue of the provisions of s. 149, C. P. C. which sets at rest the divergence of views on the point under the Code of 1882. Section 149 C. P. C. empowers the court *at any stage* to allow a plaintiff to make up the deficiency of court-fees and provides in effect that when the deficiency has been made up, the plaint is as valid as if it had been properly stamped when presented. It follows from that where a plaint written upon paper insufficiently stamped is presented to the court on the last day allowed by the law of limitation, and the judge to whom the plaint is presented directs extra court-fee to be paid, *but fixes no time for payment*, and the plaintiff pays the extra court-fee though it be *after the expiration* of the period of limitation and the court accepts it, the plaint should be treated as if the full fee had been paid in the first instance, and the suit cannot be held to be barred by limitation. *Gaya v. Awadh*, 37 I. C. 507; *Surendra Prasad v. Ataluddin*, 70 I. C. 43=

26 C. W. N. 391. In a case decided by the High Court of Patna, the plaintiff was given a week's time to make up the deficiency in court-fees. Before the expiry of the week the court closed for the vacation. The amount of deficit was tendered two days after the reopening of the court and accepted, and the plaint was registered. The period of limitation for the claim had expired prior to the date of the acceptance of the deficit. It was held that the acceptance of the fee although tendered late, and the subsequent registration of the plaint amounted to the exercise by the court of its discretion to allow the deficiency to be paid on the day when it was tendered and that the plaint could be registered. *Raghunanda v. Ram Sunder*, 4 P. 190 = 1925 Pat. 299; *Gaya Loan Office v. Audh Behary*, 1 P. L. J. 420.

**Effect of S. 28.**—A court cannot, notwithstanding the provisions of s. 28 of the Court-Fees Act, reject a plaint on the ground of deficient court-fee, unless it has under O. 7, r. 11 C. P. C. required the plaintiff to put in the additional stamp within a fixed period and he has neglected to do so. 42 I. C. 675. Assuming that the court has a discretion under s. 28 of the Court-Fees Act to refuse to receive deficient stamp on a document filed before it, such a provision is, in respect of plaints, controlled by O. 7, r. 11 which requires that plaintiff should be given an opportunity to file the additional stamp. The period fixed by the court under O. 7, r. 11 C. P. C. need not necessarily be one which is within limitation for the suit. Under the said rule and s. 28 of the Court-Fees Act, the deficient fee can be made good by order of the court irrespective of the question whether on the date when the deficient fee was put in, limitation for the suit had expired or not. 22 M. 494; 32 M. 305 (F. B.); 25 I. C. 706 (Cal.); 70 I. C. 378; 51 I. C. 154. Section 149 C. P. C. is in accordance with the above view. 32 M. 305 (F. B.); 46 I. C. 509; 45 All. 518; 89 I. C. 419. *Jagannath v. Ramgopol* 147 I. C. 342 = (1934) A. L. J. 533 = 1934 All. 160.

**S. 148 C. P. C. and enlargement of time for deposit of deficient court-fee.**—When a plaint was insufficiently stamped and the court ordered the deficiency to be made good within a fixed time, but the plaintiff neglected to do so, and the court on his application enlarged the period for payment and it was only paid within such enlarged time it was held that the suit was not barred although limitation had run out when the deficient fee was paid. See the following decisions: 19 C. 780; 27 C. 814; 20 C. 41; 27 B. 330; 31 C. 75; 51 I. C. 154; 34 C. 20 (F. B.); 4. Pat. 190; "Section 149 enacted in order to set at rest a matter on which the case law was conflicting implies that the Court may in its discretion, at any stage, allow a party to pay the deficient court-fees. But this will not overrule O. 7, r. 11 in the sense that s. 149 gives the court discretion to refuse to grant the time which O. 7, r. 11 says it *shall* grant. This seems to make it clear that the court has discretion to extend to any limit, the time within which the deficient court-fee may be paid and that if the fee is paid within the time fixed, the plaint shall stand good as on the date of its

presentation." *Per* Wallace, J., in 95 I. C. 439. See also *Jagannath v. Ramgopal*. 147 I. C. 342=1934 A. L. J. 533=1934 All. 160.

### **Plaint or Memorandum of Appeal wholly unstamped :**

—A later payment of court-fee relates back to the date of the presentation of the plaint in the absence of fraud in filing the plaint or the memorandum of appeal, unstamped. '15 M. 78; 28 M. 493; 31 M. L. J. 269.

**Memorandum of Appeal.**—A memorandum of appeal is a 'document' within the meaning of this section. *Munroe v. The Cawnpore Municipal Board*, 12 A. 57. Section 582-A of C. P. C. of 1882 which restricted the concession granted to rectify a defect due to insufficient stamp to appeals and review applications which was caused by mistake on the part of the appellant, as to the amount of the requisite stamp has been replaced by s. 149 of the Code of 1908 which applies to *all* documents chargeable with court-fees such as plaints, memorandum of appeal, or of cross objections, application for review of judgment, and written statements pleading a set off or counter-claim. Further under the new section there is no necessity to restrict the concession to cases where there is a *bona fide* misunderstanding of the law as to the valuation as was the case under Section 582-A of C.P.C. of 1882. Mr. Mulla in his commentaries on the Code of Civil Procedure VIIIth Edn. page 354 sums up the case law on this point, thus. "It is well settled that in the case of a plaint insufficiently stamped the court is bound under O. 7, r. 11 to give time to the plaintiff to make good the deficiency *even if the plaintiff has deliberately and without any excuse paid an insufficient court-fee*, provided the plaint is presented within the period of limitation. As regards an appeal however there is a difference of opinion. The High Court of BOMBAY in *Achuth v. Nagappa*, 38 B. 41=21 I.C. 337, has held that a memorandum of appeal stands on the same footing as a plaint and that just as in the case of a plaint insufficiently stamped, the court is bound to give time to the appellant to make good the deficiency, the reason given being that O. 7, r. 11, clause (c) is made applicable to appeals by s. 107 (2)." The argument that s. 149 is intended solely for the purpose of enabling the court to deal equitably with any *bona fide* misconstruction of the law, did not find favour with the judges who held that, it was not a correct interpretation of s. 149 as there are no words in the section to countenance or warrant such a limited construction of it. Further under s. 582-A (of the Code of 1882) the discretion of the Court was fettered by such a limitation while they have been omitted in the corresponding later s. 149. "Accordingly it was held that s. 149 should be read subject to the provisions in the case of plaints of O. 7, r. 11 (c) and in the case of appeals of O. 7, r. 11 (c) coupled with s. 107 (2). On the other hand it has been held by the High Court of PATNA in *Ramasahay v. Kumar Lachmi*, 3 Pat. L. J. 74=42 I. C. 675, and *Deonandan Misra v. Ganga Prasad*, 8 Pat. 906, that the court is *not bound* in the case of a memorandum of appeal insufficiently stamped to give the appellant time



to make good the deficiency, that it may allow time where the court-fee payable is open to doubt or the amount of the fee cannot be ascertained by the court till the record is received, or it appears that the appellant has made an honest attempt to comply with the law, *but that it should not allow time, if the appellant has deliberately and to suit his own convenience paid on his appeal insufficient court-fee.* According to that court, s. 149 should not be construed in such a way as to nullify the express provisions of s. 4 or s. 6 of the Court-Fees Act. In such cases of deliberate payment of insufficient court-fee, the court is not bound to receive the appeal and give the appellant time to make good the deficiency. "Even if the court has such power it was held that it would be an unreasonable exercise of discretion to do so." See also *Deonath Sahai v. Radha Kant*, 1922 Pat. 56; *Amir v. Mohan*, 3 Pat. 337=80 I. C. 1030. The view taken by the High Court of Bombay has also been dissented from by the MADRAS High Court. *Narayan v. Venkatakrishna*, 27 M. L. J. 677=26 I. C. 33. The ALLAHABAD High Court has also held that it has full power to refuse to accept a memorandum of appeal when the amount of the court-fee paid is insufficient as otherwise s. 4 of the Court-Fees Act would be evaded indirectly. *Brijbhu Khan v. Tota Ram*, 1929 All. 75. The Calcutta High Court also has held recently that though s. 149, C. P. Code which was subsequently introduced in the Code of Civil Procedure, vests in the Court a discretion to allow appeals with insufficient court-fee to be received when proper Court-Fees are paid within the time allowed by court, the discretion should be exercised on correct judicial principles, and not in a way so as to nullify the express provision of ss. 4 and 6 of the Court-Fees Act. *Khatumannessa Bibi v. Durjodhene Roy Chowdhury*, 61 Cal. 663=38 C. W. N. 650=1934 Cal. 659. To the same effect is the decision of Burn, J., of the Madras High Court in S. A. No. 696 of 1934 (unreported). See also the decision of the Lahore High Court in *Ram Labhaya v. Vaid Parkash*, 1934 Lah. 424 cited under s. 4.

**Bengal Amendment.**—By the Bengal Act VII of 1935, a new sub-section has been added to section 6. This lays down that notwithstanding anything contained in section 5 of the Act, the Court may receive an insufficiently stamped plaint or memorandum of appeal. According to section 6 of the Act no document which has been insufficiently stamped shall be received. The Bengal amendment sets at rest the conflict of views whether an insufficiently stamped memorandum of appeal could be received and whether the appellant should be granted time to make good the deficiency of stamp as a plaintiff is given under the provisions of O. VII 11 C. P. C. Even the Bengal amendment simply says that a Court *may* receive and register the appeal after the deficient Court fee is paid within a time to be fixed by the Court. The question whether in cases where the appellant pays deficient Court fee deliberately, he is still entitled to the grant of time to make good the deficiency appears to be left

open. However it appears that in Bengal the procedure to be followed in such cases is laid down as the same both in suits and appeals.

**Review Petition.**—When an application for *Review* was presented with stamps known to be inadequate and it was not until long after the period allowed had elapsed that the payment was made, it was held by the CALCUTTA High Court that there was no mistake or inadvertence within the provisions of s. 28 and that the Review application was not in time. *Midnapore Zemindari Co. v. Dayardra Nath*, 96 I. C. 433.

**Copy of order filed with Appeal.**—Where no court-fee stamp was affixed to the copy of the order appealed against filed along with the memorandum of appeal and in spite of the objection raised by the office, the stamp was not affixed till long after the period of limitation, it was held that the appeal was not properly presented within time. *Imam Din v. Sahib Din*, 147 I. C. 343=35 P. L. R. 142=1934 Lah. 272; see also *Shahadal v. Hukam*, 1924 Lah. 401.

### **Discretion of Court in granting time or extending it:—**

1. An appellate court cannot reject an appeal as insufficiently stamped without exercising any discretion in the matter. *Jai Singh v. Sitram*, 74 I. C. 77=1923 All. 349.

2. Gross negligence of appellant's counsel in the matter of the payment of court-fee cannot be condoned. *Gurusarander v. Dt. Board of Jullunder*, 102 I. C. 615, but delay that was caused by the misconduct of the pleader's clerk was condoned. *Adit Prasad Singh v. Ramharakh Ahir*, 4 Pat. 180=1925 Pat. 435.

The same view was taken in *Atmaram v. Singhai Kasturchand*, 1930 Nag. 224, where a pleader a few days before the expiry of the period of limitation filed a memorandum of appeal on a court-fee stamp of 8 annas though it ought to have been written on a court-fee of Rs. 90, as his client had not come to make any arrangements for court-fees, and it was held that the court was justified in rejecting the appeal. Filing of an appeal on insufficient court-fee stamp with the knowledge that it is insufficient with a view to save limitation cannot be allowed. *Patri Shyamlal v. Gaurishankar*, 1929 Nag. 295. See also the decision of Burn, J., in Madras in S. A. No. 696 of 1934 (unreported).

**S. 149, C. P. C.**—The object of the section is to vest the court with powers, in its discretion, at any stage to allow the person, by whom such fee is payable, to pay the whole or part as the case may be, of such court-fee and on such payment the document in respect of which such fee is payable, is to have the same force and effect as if such fee had been paid in the first instance. *Priyanath v. Mianjan*, 29 I. C. 57. Prior to 1908 there was a conflict of authority as to what the result was when a plaint was filed and insufficiently stamped or where a plaint was filed after time allowed. The Courts took different views

and the Legislature has by this section set at rest the doubts created by the conflicting decisions prevailing in Allahabad and in other High Courts.

**Where payment is made after expiry of time granted.—**

- (1) If the period is not enlarged the payment is no good, 34 C. 20 (F. B.)
- (2) But if the court-fee is accepted by court then the period must be deemed to have been extended, 1 P. L. J. 420.
- (3) If the payment is made within the period of limitation the suit is not time-barred merely because the payment is made *after* the period fixed by the court. 2 C. L. J. 70.

**Presumption when court-fee is paid and accepted by Court.**—A Court may be taken to have extended the time and to have treated the time when the court-fees were actually paid as the time fixed for payment when it accepts them on that date. *Maria Thangam-mal v. Iravatheswara*, (1915) M. W. N. 228 = 28 I. C. 504.

Further where a court accepts an insufficiently stamped document the proceedings that follow thereon are void. *Musst. Jintan v. Ahmad*, 1928 Lah. 221.

But in the following case where a division bench allowed the deficiency to be made good subject to any objection that may be taken at the hearing it was held that the order of the division bench was not a definite order condoning the delay in paying the deficit. *Jodhan v. Nankhu*, 3 Pat. L. J. 484. See also *Umed Ali v. Municipal Committee, Jhang*, 2 Lah. 1. But in *Jowala Singh v. Mt. Dhano*, 133 I. C. 122, the decision in 2 Lah. 1 was considered again by the Lahore High Court and it was held that once the court has allowed and accepted payment of deficit court-fee on a memorandum of appeal no further question of limitation arises. "It is not proper for the Court to permit the deficiency to be made up and then to hold that the appeal was barred by limitation."

**Application for letters of administration.**—Duty must be paid even where letters of administration are not absolutely necessary and they are only applied for either by way of precaution or for the sake of convenience. In the goods of *Madho Prasad*, 1935 A. L. J. 391 = 1935 All. 449.

**Levy of Stamp Duty.**—Section 28 of the Court-Fees Act does not override the provisions of the C. P. Code regarding a plaint or a memorandum of appeal and the court cannot reject an insufficiently or improperly stamped plaint or appeal without giving time to the party to supply the deficiency. *Thusal Singh v. Paran Singh*, 156 P. R. 1888. So where a plaint (*Valambal v. Vythilinga*, 24 M. 331), or a memorandum of appeal (*Chennappa v. Raghunatha*, 15 M. 29) is filed

and used without being properly stamped through a mistake of law as to the court-fee payable, the deficient stamp duty should be levied by the appellate court. As a general rule it is desirable that where an appellate court has to deal with the question of recovering deficient court-fee payable by the appellant in the lower court, the matter should be dealt with at the earliest possible moment after the deficit is discovered. *Hitendra v. Rameshwar*, 6 Pat. L. J. 293. When an appellant has failed to pay sufficient fees in the court below his appeal will not be heard till the deficiency is made good. Where it is the respondent who is in default, no decree shall be executed in his favour until the deficiency has been made good. *Rowlins v. Luchmi Narain*, 3 Pat. L. J. 443. There is no provision in the Court-Fees Act which justifies a process of attachment for recovery of court-fees after the court finally parts with the seisin of a case and the court has no power to direct the recovery of the court-fees by attachment of the plaintiff's property even if the court-fees in question are payable in law. *Mahomed Ismail v. Liyaqat Husain*, 140 I. C. 191 = (1932) A. L. J. 165 = 1932 All. 316.

**Abandonment of claim.**—A court of appeal cannot give option to the plaintiff to limit his claim to the extent of court fees paid. *Valli v. Mahomed*, 16 Bom. L. R. 763. But see *Karamchand v. The Jullundur Bank Ltd.*, 1927 Lah. 543, where it is held that an appellant could relinquish a part of his claim and pay court-fee stamp on the memorandum of appeal on the claim as reduced on appeal. Again in a pauper appeal, where the valuation of the suit was put high and when the application to appeal as pauper was rejected the appellant gave up his claim to certain properties and offered to pay court-fee on the diminished valuation, it was held that no bad faith could be inferred from those facts and that the plaintiff could abandon his claim to that extent. *Rajendra Prasad v. Gopal Prasad*, 9 Pat. L. T. 613. See further commentaries on this point under s. 12 as to the collection by appellate courts of deficit court-fees payable in lower courts.

**S. 10 of the Act.**—In cases arising under s. 10 of the Court-Fees Act, if the deficit court-fee is paid within the time specified (*vide* clause 2 of s. 10) the suit is not barred, even though limitation may then have run out. 27 All. 197; 29 All. 749 (F. B.)

**Application under s. 95, C. P. C.**—Where such an application is directed by the court to be treated as a plaint on payment of the full court-fee, the suit is instituted when the application is made, and not when the court-fee is paid. 16 C. L. J. 34.

**Appeal.**—An appeal lies against an order of a lower court dismissing an appeal on the ground of deficiency of court-fee, the appellant having failed to make good the deficiency within the time given for the purpose. *Gabba v. Kancuehilal*, 57 I. C. 225; *Surajlal v. Utim Pandey*, 63 I. C. 99.

**Revision.**—An order refusing to give time to a party to make up the deficiency in court-fee does not amount to a decision of a “case” within the meaning of s. 115 C. P. C. to enable the High Court to revise that Order. *Chhakkanlal v. Kanhiya Lal*, 45 A. 218=69 I. C. 921.

**Suit in *Forma Pauperis*.**—For the definition of a pauper see O. 33, r. 1, C. P. C. Explanation. A plaintiff suing in a civil court must pay the court-fee prescribed by the Court-Fees Act. But where a person is too poor to pay the same, provision is made in O. 33 C. P. C. to enable him to bring and prosecute suits without payment of court-fees. *Jotindra v. Dwaraka*, 20 Cal. 111. But there are certain fees from which even a pauper is not exempted viz., fees for service of process, and such fees must be paid by him. See O. 33, r. 8. If the pauper succeeds in the suit the Government has a first charge on the subject-matter of the suit for the amount of the court-fee which should have been paid by him. O. 33, r. 10. If the pauper fails in the suit, the court should order him to pay the court-fees due by him. O. 33, r. 11.

**Where an application to sue as pauper is granted.**—The suit will be deemed to have been filed on the date of the filing of the application and not on the date of its being registered as a suit (s. 4 of the Limitation Act, 1908). Consequently where the rate of court-fee was enhanced between the date of filing and the date of granting the application, the court-fees were assessed at the former rate. *Kaman v. Malli*, 49 M. L. J. 538=91 I. C. 302.

**Where application is refused.**—The suit is taken to have been filed on the date of presentation of a properly stamped plaint.

**Where the party voluntarily converts his application into a properly stamped plaint.**—A person who has applied for leave to sue as a pauper may at any time before an order is made under O. 33 r. 7 C. P. C. convert his application into a plaint, by paying into court the necessary court-fees. In such a case if the application was made *bona fide*, the suit would be deemed to have been instituted on the day on which the application was filed and not on the day on which the court-fees were paid. But if it is found that the application was made in bad faith, the suit would be deemed to have been instituted on the day on which the court-fees were paid and not on the day on which the application was filed. *Stuart Shinner v. Ordz*, 2 A. 241. *Naraini v. Mullhan Lal*, 17 A. 526; *Janakday v. Jank*, 28 C. 427; *Sookal v. Dal Chand*, 1 R. 196=74 I. C. 835. But see *Abbasi v. Nanhi*, 18 A. 206. See also Mr. Mulla's Commentaries on the Code of Civil Procedure, O. 33, r. 7.

**Application for probate by a pauper.**—If a plaintiff is allowed to sue as a pauper, the only court-fee he is bound to pay is, what is payable for service of process, he being relieved from paying all other court-fee (O. 33, r. 8, C. P. C.) All fees chargeable under the

Court-Fees Act are by virtue of s. 25 to be collected by stamps. Thus the Act makes no distinction between succession duty and other species of court-fee. It follows from this, that in the case of pauper application for probate the exemption extends also to succession duty, *Per Venkatasubba Row, J.*, in application No. 2925 of 1930 Original Side (Madras High Court unreported).

**Court-fees a first charge.**—The amount of court-fee due to Government is a first charge on the subject matter of the suit. See O. 33, r. 10 C. P. C. *Ganapat v. Collector of Kanara*, 1 B. 7. It is a crown debt and has precedence over other debts. *Collector of Kistna v. Sriramamoorthy*, 1925 Mad. 433; see also *Gayanoda v. Butto Kristo*, 33 Cal. 1040; but not against secured creditors, *Dost Muhammad v. Mani Ram*, 29 A. 537; *Ragho Prasad v. Mewa Lal*, 34 A. 223. In the case of a grant of probate to a pauper the succession duty is a first charge on the subject matter of the petition that is, the estate of the deceased. Application No. 2925 of 1930 (Madras High Court unreported).

**Mode of realisation of court-fees in pauper cases.**—The charge is to be enforced by an application for attachment and sale of the subject-matter of the suit. A separate suit for the sale of the subject-matter to realise court-fees is now barred. See O. 33, r. 13 and s. 14 C. P. C. *Ramdas v. Secretary of State*, 18 A. 419; *Babui v. Secretary of State*, 4 P. L. J. 166 = 50 I. C. 165. The application must be made by Government within three years of the date of the decree. *Appaya v. Collector of Vizagapatam*, 4 Mad. 155.

The Government may take out execution against the person or property of the plaintiff and if the defendant is directed to pay the court-fees, against his person or property. *Rama Das v. Secretary of State*, 18 A. 419. Government can realise the court-fees by attachment and sale of the property which was the subject-matter of the suit even though the same has passed from the hands of the judgment-debtor into the hands of the pauper decree-holder. *Babui v. Secretary of State*, 50 I. C. 315. The Government has no lien upon the decree for the amount of the court-fees. *Pran Kisto v. Collector of Moorshedabad*, 15 W. R. 205. If the amount of court-fees is not paid, the Govt. is not entitled to sell the decree obtained by the plaintiff, for the purpose of recovering such amount. *Jotindra Nath v. Dwaraka Nath*, 20 C. 111. Since the amount of court-fees recoverable by Govt. is a first charge on the subject-matter of the suit, it follows that a sale held in execution of such charge must prevail against a subsequent sale. *Puthia v. Voloch*, 25 M. 703. For the same reason, the defendant cannot set off any other decree against the plaintiff to the prejudice of the Government's claim for court-fees. *Janki v. Collector of Allahabad*, 9 A. 64.

**Pauper Appeal.**—The explanation to s. 3 of the Limitation Act does not apply to an application for leave to appeal as a pauper which

has been refused, even though the appellant may actually, but at a later period, stamp the memorandum of appeal presented with the petition. *Bishnath v. Jagirnath*, 13 A. 305. But when at the time the petition for leave to appeal in *forma pauperis* is dismissed, the petitioner has leave to proceed in the usual way and subsequently time is given to pay the stamp the memorandum of appeal must be taken to have been filed, when the petition was originally presented. *Bai Ful v. Banor Bhai*, 22 B. 849; *Durgachara v. Dookiram*, 26 C. 925; *Diya! Das v. Sunder Das*, 65 I. C. 741. An appellate court has power under s. 149 C. P. C. when dismissing an application for leave to appeal as a pauper, to grant time to the applicant to pay the requisite court-fee on the memorandum of appeal and the same if paid within the time limited by court, will exempt the appeal from the operation of the rule of limitation. *Nellavudian v. Subramania Pillai*, 38 I. C. 617 = 31 M. L. J. 290; *Diya! Das v. Sundar Das*, 62 I. C. 741. The time can be enlarged even under s. 5 of the Limitation Act. *Durga Charan v. Dookiram*, 26 C. 925.

**Withdrawal of suit.**—Where the plaintiff withdraws the suit with or without liberty to institute a fresh suit on the same cause of action, he is nevertheless liable to pay the court-fee. *Secretary of State v. Bhagirathi Bai*, 31 B. 10; *Secretary of State v. Narayan*, 20 B. 102.

**Dismissal of suit.**—The pauper plaintiff is bound to pay the court-fee even if the suit is dismissed without trial. *Collector of Vizagapatam v. Abdul Karim*, 12 M. 113; *Collector of Trichinopoly v. Sivarama Krishnan*, 23 M. 73. But see *Collector of Kanara v. Krishnappa*, 15 B. 77.

**Government bound to pay court-fees.**—Where Government files a suit it is as much bound to pay court-fees as an ordinary litigant. "There is no exemption in favour of Government under the Court-Fees Act as under the Stamp Act." *Bell v. Municipal Commissioners of the City of Madras*, 25 M. 493. Nor are Indian chiefs exempt. B. G. Resolution No. 2470, dated the 17th April 1888.

**Objection to inadequacy of court-fees when to be taken.**—Such objection when not taken in the trial courts cannot be raised for the first time in appeal. *Wilayat v. Umardeaz Ali Khan*, 19 A. 165. "The Court-Fees Act is not intended to arm a litigant with a weapon of technicality against his opponent but to secure revenue for the benefit of the State and a judgment not shown to have been wrongly decided to the detriment of revenue cannot be set aside at the instance of a party except on the ground of jurisdiction." *Rachappa v. Siddappa*, 43 Bom. 507 = 36 M. L. J. 437 (P. C.) See also the observations in *Mohomed Elliyas v. Rahima Bee*, 29 L. W. 42. See also 1929 Lah. 509 (2).

7. The amount of fee payable under this Act in the suits next hereinafter mentioned  
 Computation of fees payable in certain suits. [*except suits for relief under s. 14 of the Religious Endowments Act, 1863, or under s. 92 of the Code of Civil Procedure, 1908—MADRAS*] shall be computed as follows:—

I. In suits for money (including suits for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically)—according to the amount claimed :  
 for money ;

II. In suits for maintenance and annuities or other sums payable periodically—according to the value of the subject-matter of the suit and such value shall be deemed to be [*in suits for maintenance, the amount claimed to be payable for one year and in other suits—MADRAS*] ten times the amount claimed to be payable for one year :  
 for maintenance and annuities ;

III. In suits for moveable property other than money, where the subject-matter has a market-value—according to such value at the date of presenting the plaint :  
 for other moveable property having a market value ;

IV. In suits—

(a) for moveable property where the subject-matter has no market-value, as, for instance, in the case of documents relating to title,  
 for moveable property of no market-value ;

(b) to enforce the right to share in any property on the ground that it is joint family property, [*Clause deleted in Bengal*]  
 to enforce a right to share in joint family property ;

(c) to obtain a declaratory decree or order, where consequential relief is prayed,  
 for a declaratory decree and consequential relief.



for an injunction. (d) to obtain an injunction, [or other consequential relief—BOMBAY.]

for easements : (e) for a right to some benefit (not herein otherwise provided for) to arise out of land, and

for accounts ; (f) for accounts—

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal [*with a minimum fee of rupees five in the case of suits falling under clause (c)—BOM. & C. P.*] [*subject to the provisions of section 8-C.—BEN.*]

[*Provided that in suits coming under sub-clause (c), in cases where the relief sought is with reference to any immoveable property, such valuation shall not be less than half the value of the immoveable property calculated in the manner provided for by paragraph (V) of this section —MADRAS.*]

In all such suits the plaintiff shall state the amount at which he values the relief sought.<sup>1</sup>

[IV-A. In a suit for cancellation of a decree for money or other property having a money value, or other document securing money or other property having such value,

according to the value of the subject-matter of the suit, and such value shall be deemed to be—

if the whole decree or other document is sought to be cancelled, the amount or the value of the property for which the decree was passed or the other document executed,

if a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property—MADRAS.]

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1. The words "and the provisions of the Code of Civil Procedure," section thirty-one, shall apply as if for the word 'claim' the words 'relief sought' were substituted" were repealed by the Repealing and Amending Act, 1891 12 of 1891).

V. In suits for the possession of land, houses and gardens—according to the value of the <sup>for possession of</sup> lands, houses and subject-matter; and such value shall be deemed to be—

where the subject-matter is land, and—

(a) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government,

or [*where the land*—C. P.] forms part of such an estate and is recorded in the Collector's register as separately assessed with such revenue,

and such revenue is permanently settled—ten [*twenty*—B. & O., MADRAS and ASSAM] the revenue so payable :

(b) Where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or [*where the land*—C. P.] forms part of such estate and is recorded as aforesaid ;

and such revenue is settled, but not permanently—five [*ten*—MADRAS ; B & O. and PUNJAB ; *seven and half*—C. P.] times the revenue so payable :

(c) where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue,

and nett profits have arisen from the land during the year next before the date of presenting the plaint—fifteen times such nett profits :

but where no such nett profits have arisen therefrom—the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood ;

- (d) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as above mentioned—the market value of the land :

*[Provided that if rules are framed under s 3 of the Suits Valuation Act, 1887, for determining the value of land for the purposes of jurisdiction, the value so determined shall be deemed to be the value of the land for the purposes of this paragraph—MADRAS.]*

Provided that, in the territories subject to the Governor of Bombay in Council the value of the land shall be deemed to be—

Proviso as to Bombay Presidency ;

- (1) where the land is held on settlement for a period not exceeding thirty years and pays the full assessment to Government—a sum equal to five [*seven and half—BOMBAY*] times the survey-assessment ;
- (2) where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government—a sum equal to ten [*fifteen—BOMBAY*] times the survey-assessment ; and
- (3) where the whole or any part of the annual survey-assessment is remitted—a sum computed under paragraph (1) or paragraph (2) of this proviso, as the case may be, in addition to ten [*fifteen—BOMBAY*] times the assessment, or the portion of assessment, so remitted :

*Explanation.*—The word “estate,” as used in this paragraph, means any land subject to the payment of revenue, for which the proprietor or farmer or raiyat shall have executed a separate engagement to Government or which, in the absence of

such engagement, shall have been separately assessed with revenue ;

for houses and  
gardens.

(e) Where the subject-matter is a house or garden—

according to the market-value of the house or garden ;

[V. *In suits for the possession of land, buildings or gardens—*

(a) *according to the value of the subject-matter, and such value shall be deemed to be fifteen times the nett profits which have arisen from the land, building or garden during the year next before the date of presenting the plaint, or if the Court sees reason to think that such profits have been wrongly estimated, fifteen times such amount as the Court may assess as such profits or according to the market value of the land, building or garden, whichever is lower ;*

(b) *if, in the opinion of the Court, such profits are not readily ascertainable or assessable, or where there are no such profits, according to the market value of the land, building or garden :*

*Explanation.—In this paragraph “ building ” includes a house, out-house, stable, privy, urinal, shed, hut, wall and any other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatsoever.—clause V substituted in Bengal.]*

VI. In suits to enforce a right of pre-emption—  
according to the value (computed in accordance with paragraph v of this section) of the land, house or garden in respect of which the right is claimed;

to enforce a right of  
pre-emption.

[VI. *In suits to enforce a right of pre-emption—according to the market value of the land, building or garden in respect of which the right is claimed :*

Explanation.—*In this paragraph ' building ' has the same meaning as in paragraph V :—BENGAL.]*

[VI-A. *In suits for partition and separate possession of a share of joint family property or of joint property, or to enforce a right to a share in any property on the ground that it is joint family property or joint property—if the plaintiff has been excluded from possession of the property of which he claims to be co-parcener or co-owner, according to the market value of the share in respect of which the suit is instituted :—BENGAL.]*

VII. In suits for the interest of an assignee of land-revenue—fifteen times his nett profits as such for the year next before the date of presenting the plaint ;

for interest of assign-  
ee of land-revenue ;

VII. In suits to set aside an attachment of land or of an interest in land or revenue—according to the amount for which the land or interest was attached :

to set aside an  
attachment ;

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest ;

IX. In suits against a mortgagee for the recovery of the property mortgaged, and in suits by a mortgagee to foreclose the mortgage,

to redeem ;

to foreclose ;

or, where the mortgage is made by conditional sale, to have the sale declared absolute—

according to the principal money expressed to be secured by the instrument of mortgage ;

[IX. (a) *In suits against a mortgagee for the recovery of the property mortgaged,—according to the principal money expressed to be secured by the instrument of mortgage ; and*

- (b) *in suits by a mortgagee to foreclose the mortgage, or, where the mortgage is made by conditional sale, to have the sale declared absolute,—according to the amount claimed as due at the date of presenting the plaint.—new clause IX substituted in Central Provinces.]*

X. In suits for specific performance—

- for specific perform-  
ance;                      (a) of a contract of sale—according to the amount of the consideration ;
- (b) of a contract of mortgage—according to the amount agreed to be secured :
- (c) of a contract of lease—according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term ;
- (d) of an award—according to the amount or value of the property in dispute :

XI. In the following suits between landlord and tenant :—

- between  
and tenant.      landlord                      (a) for the delivery by a tenant of the counterpart of a lease,
- (b) to enhance the rent of a tenant having a right of occupancy,
- (c) for the delivery by a landlord of a lease,
- (cc) for the recovery of immoveable property from a tenant including a tenant holding over after the determination of a tenancy,
- (d) to contest a notice of ejectment,
- (e) to recover the occupancy of [immoveable property] from which a tenant has been illegally ejected by the landlord, and
- (f) for abatement of rent—

according to the amount of the rent of the [immoveable property] to which the suit refers, payable for the year next before the date of presenting the plaint.

#### COMMENTARY.

**Amendments.**—Para (iv) The words “and the provision of the Code of Civil Procedure s. 13, shall apply as if for the word ‘claim’ the words ‘relief sought’ were substituted” were repealed by the Repealing and Amending Act of 1891 (XII of 1891).

Para (xi) The clause (cc) was inserted by the Court-Fees Amendment Act, 1905 (VI of 1905). In clause (e) for the word ‘land’ the words ‘immoveable property’ were substituted by the Court-Fees Amendment Act VI of 1905.

**Local Amendments.**—Several portions of the section have been amended by the Amending Acts of the various Provincial Legislatures of Bengal, Bihar and Orissa, Bombay, Central Provinces and Madras. They are set out in extenso in the Appendix. The amendments are incorporated in the section itself and the portions printed in italics. As regards certain excepted suits in Madars see *infra*.

**Section fairly exhaustive.**—This section is easily the most important section in the whole Act. It is headed as “Computation of fees payable in *certain* suits.” Though it is a regular bunch of sub-sections, clauses and provisos which cover almost the whole range of possible actions and attempts to be both comprehensive and exhaustive, the want of precise expression in several places has led to the overlapping of certain provisions giving rise to difficulties in interpretation, and consequent conflict of decisions. These are all set out in detail in commenting on the several paragraphs. Still this is the most important section which will have to be referred to in the valuation of suits. This is supplemented mainly by Article 1 of schedule I which provides for cases ‘not otherwise provided for in the Act’. This section lays down the category of the suit for the purposes of valuation, and which class a suit belongs to and then Article 1 Schedule I would show the actual fee to be collected as *ad valorem* fees. If a fixed fee is leviable, then Schedule II of this Act provides for same.

#### Valuation.

**(1) For court-fee and jurisdiction.**—Valuation of the subject-matter of litigation is of two kinds. It is either for the purpose of determining the forum, in which case it is valuation for the purposes of jurisdiction (*Ankil Chunder v. Mohini Mohan*, 5 C. 489) or it is for the determination of the court-fee payable. The principles of valuation for the purposes of jurisdiction are regulated by the Suits Valuation Act and those for determining the court-fees are regulated by the provisions of the Court-Fees Act.

**(2) Different kinds of valuation.**—The valuation of the subject-matter of litigation is either actual, notional or statutory. In a suit for money for damages or compensation for instance, the valuation is the actual value of the claim (s. 7, cl. 1). On the other hand in cases covered by clause iv of s. 7 for example a suit to obtain an injunction or for the recovery of moveable property which has no market value, *e.g.*, documents of title, the valuation is mainly arbitrary and the valuation is according to the amount at which the relief sought is valued by the plaintiff. In the third class of cases, for instance, a suit for maintenance and annuities or other sums payable periodically, the value should be "deemed to be ten times the amount claimed to be payable for one year." (clause ii of s. 7.) This is a mere arbitrary capitalisation of a recurring claim and is a statutory valuation.

### Method of valuation under—

**(1) The Court-fees Act.**—As soon as a plaint or a memorandum of appeal is filed, the court will proceed to see whether the proper fee is a fixed one under Schedule II or an *ad valorem* fee under Schedule I. No question of valuation arises if the fee is a fixed fee; but if an *ad valorem* fee is leviable, then the court will proceed to value the subject-matter in dispute and fix the amount of the relief claimed according to rules for computation set out in ss. 7 and 8 of the Act. *Krishna Mohan v. Raghunandan*, 4 Pat. 336 at page 357.

**(2) The Suits Valuation Act.**—This Act consists of two parts: Part I prescribing the method for valuing suits relating to lands and Part II dealing with suits other than lands. The relevant sections of this Act referring to the corresponding provisions in the Court-Fees Act are ss. 3 and 4, in Part I and ss. 8 and 9 in Part II. Section 3 provides for the framing of rules by the Local Government for determining the value of land for purposes of jurisdiction in suits mentioned in paragraphs v, vi and x (d) of s. 7 of the Court-Fees Act. They are suits for possession of lands, gardens, etc., to enforce right of pre-emption and for the specific performance of an award. Section 4 relates to the valuation of suits coming under clause iv of s. 7 and sch. II, Art 17 of the Court-Fees Act. By s. 9 power is given to the High Court following the procedure therein prescribed to frame rules in cases not covered by paragraphs v, vi and x (d) of s. 7 of the Court-Fees Act—to frame rules regarding which power has already been given (s. 3 of the Suits Valuation Act) to the local Government in consultation with the High Court (s. 5 of the Suits Valuation Act)—for the valuation of suits "where the subject-matter is such that in the opinion of the High Court does not admit of being satisfactorily valued."

By s. 8 of the Suits Valuation Act, it is provided that "where in suits other than those referred to in s. 7 paragraphs v, vi, ix, and x (d) of the Court-Fees Act, court fees are payable *ad valorem* under the Court-Fees Act, the value as determinable for the computation of court-



fees and the value for purposes of jurisdiction shall be the same.' See also the proviso for Madras in s. 7 (iv) (c).

### Rules for the determination of valuation.

(i) If the valuation is for the purposes of jurisdiction, the valuation as per the provisions of the Court-Fees Act is not proper except in those cases where by s. 8 of the Suits Valuation Act, the valuation both for court-fees and jurisdiction is to be the same. *Jeebraj v. Indrajit*, 18 W. R. 109; *Anrita v. Naru*, 13 B. 489; *Bai Meher v. Magan Chand*, 29 B. 96.

(ii) In cases where the valuation is to be the same both for court-fees and for purposes of jurisdiction, the procedure to be adopted is first to value the suit for payment of court-fees in accordance with s. 7 and then adopt the valuation so determined as the value for jurisdiction. *Sailendra v. Ramchandran*, 25 C. W. N. 768; *Hari Sankar v. Kali Kumar*, 32 C. 734; *Velu Gounder v. Kumaravelu*, 20 Mad. 289; *Annappurnayya v. Nagarathnamma*, 1926 Mad. 591.

(iii) In the cases specified in s. 8 of the Suits Valuation Act, different valuations for the purposes of court-fees and for jurisdiction should not be given. *Balakrishna v. Janaki Bai*, 44 B. 331; *Jogeshwara v. Durgaprasad*, 36 A. 500; *Kandhaiya v. Jagram*, 46 A. 419; *Ayimuddin v. Kadir Rowthen*, 43 I. C. 995.

(iv) The plaint alone should be looked to for the determination of the value of the claim. *Rajabala Dasi v. Radhica Charam*, 1924 Cal. 969; *Bagula Sundari v. Prasanna*, 35 I. C. 797; *Mahendra Chandra v. Ashuthosh*, 20 C. 762; *Zinnatunessa v. Girindra*, 30 C. 788; *Banku v. Chatur*, 1925 Pat. 640; *Chingathan Vittel Sankaran v. C. Vital Gopal*, 30 Mad. 18; *Karuppa Thevan v. Angammal*, 1926 Mad. 678 = 51 M. L. J. 67; *Arunachala Chetty v. Rangaswami Pillai*, 38 M. 922; *Bindraban v. The Punjab National Bank*, 30 P. L. R. 176; *Iswara Prasad, v. Hari Prasad Lal*, 6 Pat. 506 = 1927 Pat. 145; *Tulsi Bibi v. Furokh Bibi*, 60 C. L. J. 337; *Secretary of State v. Lakhanna*, 64 M. L. J. 24 = 141 I. C. 80 = 1933 Mad. 430; *Manikkam Pillai v. Murugesam Pillai*, 64 M. L. J. 576 = 1933 Mad. 431. It is not the function of the court to ask itself whether the allegations in the plaint are true or probable. *Secretary of State v. Lakhanna*, 64 M. L. J. 24 = 141 I. C. 80 = 1933 Mad. 430. A plaintiff is clearly entitled to have the case made by him in the plaint tried by the courts. The question of court-fee must be decided on the plaint and the decision is not affected by the question whether the suit is maintainable. *Radhakrishna v. Ram Narain*, 1931 All. 369; *Ishwar Dayal v. Amba Prasad*, 1935 A. L. J. 498 = 1935 All. 667.

(v) In determining the provisions of the Act applicable to a particular suit, the allegations made by the plaintiff alone must be considered and the pleas raised by the defendant do not affect the question. *Asa Ram v. Jagan Nath*, 15 Lah. 531 = 1934 Lah. 563 (F.B.); *Hassan Khan v. Ahmad Khan*, 1935 Pesh. 30. The averments in the written statement of the defendant cannot be taken into consider-

ation in the determination of the value of the suit. *Musst. Barkatunnissa Begum v. Fatima*, 5 Pat. 631; *Bagula Sundhari v. Prasanna*, 35 I. C. 797; *Venkataramani v. Narayanaswami*, (1925) M. W. N. 276. It is a fundamental principle that competence ought to be determined by the value of the plaintiff's demand rather than by defendant's plea which only impugns the existence of the demand, but does not alter or affect its nature. *Chandra v. Kombi*, 9 M. 208.

(vi) Where under the Act there is no direction as to how particular reliefs are to be valued, the valuation of the subject-matter in litigation vests with the plaintiff and not with the court. *Rikhi Kesh v. Mela Ram*, 94 I. C. 650=1925 Lah. 242; *Sheodeni v. Thulsi Ram*, 15 A. 378; *Vachhani Kashabai v. Vachhani Namba*, 33 B. 307; *Hari Sankar v. Kalikumar*, 32 C. 734; *Jan Mohammad v. Mashar*, 34 C. 352; *Guruvaiaamma v. Venkatakrishnamma*, 25 M. 34; *Tayabally v. Messrs. James Finlay and Co.*, 80 I. C. 969; *Bura Mal v. Tulsi Ram*, 9 Lah. 366=107 I. C. 609=1927 Lah. 890.

(vii) But if the valuation is capricious or arbitrary, the court has power to revise it. *Umatul v. Nanji*, 11 C. W. N. 705; *Motibai v. Haridass*, 22 B. 315; *Bepin v. Rajkrishna*, 40 C. 245; *Jogesh v. Durga Prasad*, 36 A. 500; *Kalicharan v. Sivasankar*, 79 I. C. 113. [See now s. 8-C. newly introduced in Bengal by Beng. Act. VII of 1935.]

But the view of the High Court of Madras is that the court's power to revise is limited to cases provided for by s. 9 of the Act. *Ghannammil v. Madrasa*, 27 M. 480; *Samiyar v. Minammal*, 23 M. 490; *Guruvaiaamma v. Venkatakrishnamma*, 25 M. 34. See also *Rajendra v. Bahu Rani*, 107 I. C. 330=1928 Oudh 260.

Although it is the value put by the plaintiff on his suit that *prima facie* determines jurisdiction, it does not follow that a plaintiff is at liberty to assign any arbitrary value to the suit. If the over valuation or under valuation is not patent on the face of the plaint, but the defendant contends that it has been overvalued or undervalued, the plaintiff may be required to satisfy the court that the suit has been properly valued if there are *prima facie* grounds for believing that the suit has not been properly valued but not otherwise. See Mulla's Commentaries on the Civil Procedure Code, s. 15.

(viii) Even in cases where there are no sufficient materials for valuation or where the suit is one for taking accounts or determining mesne profits and such amount could not be ascertained when the suit is launched, a rough or approximate value should nevertheless be given. *Gulab v. Abdul*, 31 C. 365; *Dipchand v. Permand Chiman-das*, 79 I. C. 582=1924 Sind 144.

(ix) As is done in all cases of interpretation of documents, it is the substance of the claim that must determine the value and not the language used in the plaint. *Alagar Aiyangar v. Srinivasa Aiyangar*, 50 M. L. J. 406=1925 Mad. 1248; *Arunachalan Chettiar v. Rangaswami*, 38 M. 922. To arrive at a conclusion one has to look

beneath the form and verbiage of the plaint to arrive at what is its real substance, *Bhagwan v. Shivappa*, 101 I. C. 770=1927 Nag. 248; and not merely the reliefs asked for, *Kamala Prasad v. Jagannatha Prasad*, 10 Pat. 432=1931 Pat. 78; or the form in which the relief is prayed for, *Kathiya Pillai v. Ramaswami Pillai*, 56 M. L. J. 394=1929 Mad. 396; *Noksing v. Bholsing*, 1930 Nag. 73; *Sundara Ganapati Mudali v. Deivasikamani Mudali*, 1931 Mad. 94; *Venkatasiva Rao v. Venkatanarasimha Satyanarayanamurthy*, 139 I. C. 317=63 M. L. J. 764=1932 Mad. 605. The object and nature of the suit has to be ascertained and the cause of action stated by the plaintiff affords the test for the determination of the nature and scope of the suit. *Mt. Manik v. Ranjas Agarwalla*, 1923 Pat. 152. The object and the nature of the suit alone are the determining factors. *Phulkumari v. Ghasi Shyam*, 35 C. 202 (P. C.)

(x) It is the plaintiff's valuation in his plaint that fixes the jurisdiction and not the amount that may be found and decreed by court. *Lakshmanan v. Babaji*, 8 B. 31; *Madho Das v. Ramji*, 16 A. 286.

(xi) Events happening subsequent to filing of plaint cannot be taken into consideration in fixing the valuation. *Ram Adhar v. Ram Shankar*, 26 A. 215; *Govindan v. Perundevi*, 12 M. 136; *Narayana-swami Naidu v. Ramayya*, 26 I. C. 475. But it might be done in exceptional cases to avoid hardship to parties. *Rai Charam v. Biswanath*, 26 I. C. 410.

(xii) In calculating the amount of court-fees payable for a memorandum of appeal, the decision of the trial court may be taken into consideration. *Rangamane v. Jogendra*, 3 I. C. 304. Further when the plaintiff fixes a certain sum as the amount of his claim only approximately or tentatively and prays that the amount of his claim may be ascertained in the course of the suit, the amount found by the court to be due to him must be regarded as the value of the original suit for the purpose of determining the forum of appeal. *Gulab v. Abdul Wahab*, 31 C. 365.

(xiii) When a plaintiff claims alternative reliefs, valuation of the claim is the value of the largest of the reliefs claimed. *Kasinath v. Govinda*, 15 B. 82; *Motigavri v. Pranjivan*, 6 B. 302.

(xiv) Where there is in the Court-Fees Act itself a special rule for valuing the property in suits for court-fees, it is proper to take that method of valuation in preference to any other method to get the value where there is no indication that any other method should be adopted. *Venkatanarasimha v. Chandrayya*, 53 M. L. J. 267=105 I. C. 101=1927 Mad. 825. This decision is criticised at length in the commentaries under s. 7 cl. IV-A (Mad.) *supra*.

### **Objections as to valuation and court-fees.**

(1) They must be raised in the trial court and cannot be taken for the first time in appeal. *Wilayat v. Umardraz Ali Khan*, 19 A. 165; *Rachappa v. Siddappa*, 43 B. 507=50 I. C. 280.

(2) Objections not taken in the first appellate court cannot be agitated in second appeal. *Ranga Pai v. Baba*, 20 M. 398. But see *Kasturi Chetti v. Dy. Collector, Bellary*, 21 M. 269.

(3) Where an objection is taken, the court is to frame an issue on the point and decide it. *Ganga Prasad v. Bhavani*, 62 I. C. 853.

(4) Where plaintiff pays additional court-fees as per order of the court, he can take objection to it in appeal. *Mani Lal v. Durga Prasad*, 3 Pat. 930 = 80 I. C. 667 = 1924 Pat. 673.

(5) But where the plaintiff accepting the decision of the trial court stamps his memorandum of appeal accordingly and raises no question in the first appellate court, he is precluded from questioning it in second appeal. *Chunnu Lal v. The Bank of Upper India*, 40 I. C. 904.

**Suits relating to Religious Endowments: Madras Amendment.**—By the Madras Amendment the following classes of suits under (1) s. 14 of the Religious Endowments Act, 1863 and (2) s. 92, C. P. C., are excepted from the provisions of this section. Now see s. 8 of the Madras Hindu Religious Endowments Act, II of 1927, which repeals the Religious Endowments Act, 1863, so far as they apply to Hindu Religious endowments to which Madras Act II of 1927 applies. Section 92, C. P. C., refers to suits relating to Public Charities.

## PARAGRAPH I: SUITS FOR MONEY.

**Scope of the clause.**—The clause relates to suits for money which are not otherwise specifically provided for. *Qyamuddin v. Delhi Flour Mills*, 47 I. C. 992.

**Suit for money.**—The following have been held to be suits for money under this clause.

- (a) Suit for specific performance of a contract of guarantee or in the alternative for damages for breach of contract. *Chumi Lal v. Secretary of State*, Bom. P. J. 1890, 204.
- (b) Suits on negotiable instruments and bonds. *Suttobhama v. Jameruddy*, 4 W. R. 12.
- (c) Suit for past rent that has accrued due. *Perumal v. Motumal*, 17 I. C. 44. *Shahzadi Begum v. Mabub Ali*, 42 A. 353 = 55 I. C. 809.
- (d) Suit for the recovery of mortgage money by the sale of mortgaged property. *Kasinath v. Ganpat Rao*, 18 B. 696; *Nama v. Hari*, 7 Bom. L. R. 194. Where in a suit for a sale upon a mortgage, there is a prayer in the plaint that the mortgaged property may be sold subject to a prior mortgage in the plaintiff's favour, which is mentioned in the plaint, the plaintiff has to pay *ad valorem* court-fee

on the amount he seeks to recover under the second mortgage plus a fixed fee as for declaration in respect of the prior mortgage. *Iswar Dayal v. Anna Saheb*, 152 I. C. 814=4 A. W. R. 1205.

- (e) Suit for damages for breach of contract. When the plaintiff suing for damages sets off against his claim amounts due by him to the defendant and sues only for the balance, it is sufficient if court-fee is paid on that amount. *Quammuddin v. Delhi Flour Mills Coy.*, 47 I. C. 992; *D. S. Abraham and Co. v. E. Ebrahim*, 2 Rang. 462=84 I. C. 971=1925 Rang. 65.
- (f) Suit for arrears of maintenance or annuity with no claim for future maintenance (as contrasted with suits for maintenance falling under clause ii). *Shahazidi Begum v. Mahbub Ali*, 42 A. 353=55 I. C. 809; *Musst. Bairam Dei v. Ram Sewak Lal*, 107 I. C. 552. See also *Mt. Udobai v. Ram Autar*, 1934 Lah. 150 (claim for declaration of charge on certain properties for a sum of money borrowed for monthly expenses held to be one for arrears of maintenance).
- (g) Suit for recovery of moveables and their value *Amaranath, v. Thakur Das*, 3 A. 131.
- (h) Instalment bond. The fee is payable on the amount claimed and not on the whole amount of the bond *Suttobama v. Jameerreddi*, 4 W. R. 12.
- (i) Suit for recovery of commission due. *Harjimal v. Dhanpatmal*, 64 I. C. 626.
- (j) Suit for past mesne profits. *Nandakumar v. Bilas Ram*, 40 I. C. 579.
- (k) Suit for an ascertained sum of money falls within the clause and not under clause (iv)l(f). *Phularchand Coal Coy. v. Barrakar Coal Co.*, 1930 Pat. 605.

For a full discussion as to the court-fees payable on amounts claimed or ascertained as mesne profits, see commentaries under s. 11.

**The following are held not to fall under this clause.**

- (a) Suit for recovery of purchase price was held to be a suit for specific performance of a contract. *Bhashya v. Andalammal*, (1918) M. W. N. 896.
- (b) Suit on a mortgage deed for foreclosure or order for making a mortgage by conditional sale absolute. *Kasinath v. Ganpat*, 18 B. 696.
- (c) Suit for enhancement of rent under s. 7 of the Bengal Tenancy (Amended) Act. *Prasannadeb Raikat v. Purna Chandra Saha*, 61 Cal. 513=1934 Cal. 674.

### **Court-fees on memorandum of appeals.**

(1) The fee must be paid on the amount of dispute in the appeal. If the plaintiff's claim is dismissed in part, and he appeals against the decree, the value of the appeal is the amount disallowed. If the claim is allowed in whole or in part and the defendant appeals, it is against the whole or portion of the decree appealed against.

(2) Regarding the fees payable on future mesne profits and interest that accrued due after the institution of the suit and as to how far court fee is payable regarding same, there is a divergence of views between the several High Courts. For a full discussion of same see commentaries under s. 11 and Article 1, Schedule I.

(3) When a charge has been created on certain properties for a specified amount and an appeal is preferred to have the same vacated, it was held that if the value of the property is less than the decretal amount the *ad valorem* court-fee on the value of the properties must be paid; but if the decretal amount did not exceed the value of the properties, they should pay court-fee on the entire decretal amount because they are asking for an exoneration of their properties from the entire decree. *Madho Ray v. Musst. Bibi*, 5 Pat. 721.

**Amounts claimed as set off, counter-claim, etc.**—These again partake of the nature of a suit for money by the defendant either in answer to plaintiff's claim or as a counter-claim. The computation of fee leviable in respect of same is discussed under Art. 1, Schedule I, *infra*.

**Jurisdiction.**—According to s. 8, the valuation under this clause for purposes of court-fee is the same as for jurisdiction.

## **PARAGRAPH II: SUITS FOR MAINTENANCE AND ANNUITIES.**

**Paragraphs I and II compared.**—This clause provides for suits for maintenance, and annuities or other sums payable periodically. While clause (i) of this section provides for cases where there is a specific amount claimed "as arrears of maintenance, of annuities, or other sums payable periodically", this clause provides for the cases where the right to same is sought to be established and the amount of maintenance, annuity, etc., payable in future is to be determined. Obviously as the amounts are to be determined and the period for which the payments are to be made are in most cases indefinite, it is not possible to estimate correctly the exact monetary value of the claim. Hence provision is made in this clause to the effect that 'such value shall be deemed to be ten times the amount claimed to be payable in one year.'

**Madras Amendment.**—Especially in the case of maintenance claims as in the case of claims for damages the plaintiff usually errs

on the safer side by making a liberal claim, and as ten times the annual claim, will usually be a comparatively stiff figure the fee will be felt as a heavy burden especially by Hindu widows who figure as plaintiffs in such suits. In this respect, the Madras amendment reducing the value for court-fee in suits for maintenance, to the amount claimed to be payable in one year, obviates a real hardship and does away with at least one of the several cases of unequal incidence of the fee the existence of several of which is one of the glaring defects of the existing Court-Fees Act.

**Suit for arrears and future maintenance.**—Where the claim is not only for the declaration of his right to maintenance and the rate of maintenance and also combined with it is a claim for the recovery of a specific sum as arrears of maintenance, then the fee payable is under both the clauses i and ii, the former clause applying to the claim of arrears and the latter clause for the computation of the value of the claim for future maintenance. *Garya Bai v. Har Knar*, 6 A. W. N. 228; *Narasimhacharya v. Rayacharya*, 5 B. H. C. R. 55 (A. C.) See also *Shahzadi Begum v. Mahbub Ali*, 42 A. 353 = 55 I. C. 809.

**Maintenance Decrees.**—Where the decree directs that a specific sum should be paid to the decree-holder, the latter can realise his or her dues by way of execution of the decree and no fresh suit is to be filed. *Ashutosh v. Lakhimoni Devi*, 19 C. 139; *Lakshmi Bai v. Madhava Rao*, 12 B. 65.

But when there is simply a declaration of the right of maintenance without any direction to the judgment-debtor to pay the maintenance amounts periodically to the decree-holder, there is obviously no executable decree (*Sri Krishna v. Singara*, 4 M. 21) and a suit for the recovery of the dues will have to be filed. *Madhava Rao v. Rama Rao*, 22 B. 267; *Vishnu v. Manjamma*, 16 A. 179.

On the analogy of the provision in decrees in Scheme suits, there may be a provision in a maintenance decree giving liberty to the parties to apply to court for the modification of the decree by the enhancement or reduction of the rate due to change of circumstances of the judgment-debtor or the decree-holder, either for the better or worse as the case may be. *Gopika Bai v. Dattatriya*, 24 B. 336. If there is no such liberty given to the party, a suit always lies for the said purpose. In such cases, the subject-matter of the suit is clearly the amount by which the maintenance is sought to be increased or decreased. And the valuation is ten times the amount of difference for one year except of course in cases covered by the Madras amendment in which case it is simply the amount of difference for one year in cases of suits for maintenance. This appears to be the proper course. But so far as decided cases go, while this principle of valuation is approved of and followed in the cases of suits by maintenance decree-holders for enhancement of the

rate of maintenance it is not applied to cases where the judgment-debtor applies to have the rate of maintenance reduced. To those suits this clause is held not applicable as the clause relates only to suits for maintenance. Obviously a person who wants to have his burden of a recurring payment of maintenance lightened, and files a suit therefor cannot be held to be filing a suit for maintenance and strictly construed that clause can apply only to suits by a plaintiff claiming maintenance or a maintenance decree-holder suing for enhancement of maintenance. Then the difficulty arises as to the fee payable in the converse case, by the judgment debtor for reduction. It may be construed to be either a suit for declaration that the proper maintenance is only such and such and for consequential relief in the shape of modification of the decree or for injunction to restrain the maintenance decree-holder from executing the maintenance decree. Then the suit falls under clause iv (c) of this section where a declaratory decree with consequential relief is prayed for and the plaintiff can fix his own valuation. (But see *Bari Bahu v. Kundan Singh*, 71 I. C. 31=1922 Nag. 264); or his claim may be treated as a suit which is not capable of being properly valued in which case the residuary Article 17 (vi) of Schedule II applies. Still another way is to construe it as a suit for simple declaration and then Schedule II Article 17 (iii) applies. *Raka Bai v. Ganda Bai*, 1 A 594; *Gopika Bai v. Dattatreya*, 24 B. 386.

**Other sums payable periodically.**—On the principle of *ejusdem generis* these words though general in import must be confined to things of the same nature as precede and not amounts claimed as rent, damages and the like. *Kali Charan v. Keshao Prasad*, 51 I. C. 15=4 Pat. L. J. 561; *Dhanukdhari v. Mani*, 6 Pat. 17=100 I. C. 913=1927 Pat. 123; *Prasannadeb v. Purnachandra*, 61 Cal. 513=38 C. W. N. 527. It has been held that the court-fee payable on application under ss. 105-A and 106 of the Bengal Tenancy Act is ten times the difference between the rent recorded and the rent claimed (subject to a maximum of Rs. 20 under Beng. Govt. Notification No. 6954, dated 27-7-1922) in respect of each tenancy, whether this clause is applicable or not. *Charusila Dassi v. Muzaffar Sheikh*, 59 Cal. 997=1932 Cal. 674. Suhrawardy, J., observes in this case: "The amount of rent may be said to be a sum payable annually to the landlord and the valuation should be ten times the rent or in such cases, the difference between the rent admitted and the rent claimed. If the matter in dispute does not come under that clause, I think, justice would be done by holding that the capitalized value should be ten times the difference between rents admitted and claimed." See 1932 Cal. 674 at 677.

### Cases not falling under this clause.

(1) When the plaintiff files a suit for rectification of a deed by which she purports to have given up her rights to certain properties for the consideration of a fixed maintenance to be given to her as



that maintenance clause was not incorporated in the deed, the suit though relating to a claim for maintenance was held to be a suit for declaration with consequential relief. *Bari Bahu v. Kundan Singh*, 71 I. C. 31.

(2) Where the plaintiff asked for a declaration as to his right to an office and for payment annually of his emoluments attached to the said office, it was held that the valuation cannot be made under this clause as the right to his emoluments is conditional on performance of service which the plaintiff may by reason of his death or dismissal never perform. *Krishna v. Ravi Varma*, 8 M. 384.

(3) Where the suit was for a declaration that the surplus offerings of a certain shrine were payable to the plaintiff by the defendant, the successor in office, it was held not to fall under the clause but taxable under Article 17 (iii) of Schedule II. *Garijamund v. Sailajanand*, 23 C. 645.

(4) Suit for recovery of a sum as damages for use and occupation or for assessment of rent does not come under this clause. *Kalicharan v. Kesho Prasad*, 51 I. C. 15 = 4 Pat. L. J. 561.

(5) Suit to establish or negative a right of occupancy does not fall under this clause. *Ratan Singh v. Khan Karam*, 40 A. 358.

**Valuation and jurisdiction.**—According to s. 8 of the Suits Valuation Act, the valuation of suits under this clause is the same for court-fees and for jurisdiction. In a suit where an annuity is sought to be declared as a charge upon property, the value of the annuity and not that of the property to be charged determines the valuation of the suit. *Mira Abid Hussain v. Ahmad Hussain*, 28 C. W. N. 289 (P. C.)

### PARAGRAPH III: SUITS FOR OTHER MOVEABLE PROPERTY HAVING A MARKET VALUE.

#### Scope of the clause.

This clause provides for suits for moveable property other than money. Suit for money is provided for in paragraph (i). It is only where the moveable property has got a market-value, that this clause is applicable. Where it has no market value as for instance in the case of documents relating to title, provision is made in paragraph iv (a).

**Market-value.**—The market-value of a property is the value which it would fetch in the open market, and this must be determined with reference to the circumstances existing at the date of the plaint. *Manmathanath v. Secretary of State*, 25 C. 194 (P. C.); *Rajagopala v. Ramasubramania*, 74 I. C. 198.

### Certain specific kinds of suits.

(1) **Suit by defeated claimant.**—A suit for declaration by a defeated claimant that certain moveable property in his possession is not liable for attachment in execution of a decree does not fall within this paragraph. *Gulzari Mul v. Jadun Ray*, 2 A. 63.

(2) **Partition suit.**—A suit for partition of moveable property does not fall under this paragraph but is governed by paragraph iv (b).

(3) **Suit for recovery of documents.**—There is no uniformity of decisions as to how a suit for the recovery of a bond or document is to be valued. Of course so far as documents relating to title are concerned, it is provided specifically in paragraph iv (a) as a typical case of moveable property which has no market-value. It was held in *Saligram v. Dewan Mahomad Fazunulla* (P. R. 39 of 1875), that a suit for possession of a mortgage deed fell under this paragraph and in *Naro Chummaji v. Ram Bai* (1894 Bom. P. J. 145), that a suit for delivery of a bond and for injunction restraining the defendants from withdrawing certain monies from a bank were to be charged under clauses (a) and (d) of para (iv) which means that the value thereof is according to the amount at which the relief sought is valued in the plaint. In a recent case, the Madras High Court also has held that a suit for declaration that the person really interested in a promissory note is the plaintiff and not the defendant, though it is in the defendant's name and for recovery of the note, in which the maker of the note is impleaded as defendant so that the finding may be binding on him also and there is no prayer for recovery of the money due on the note from him, falls under s. 7 cl. (iv) (a) and not under S. 7 cl. (iii) and the plaintiff has got to state the amount at which he values the relief. *Venkata Rao v. Sesharathnamma*, 152 I. C. 75 = 67 M. L. J. 680 = 1934 Mad 730. But in *Chet Singh v. Mul Singh* (10 P. R. 1871) the view taken is that bonds should not be valued as so many pieces of paper or manuscript or on the value of the stamp paper on which they are engrossed, but upon their actual value that is held to be nothing less than the amounts for which they are held as securities. See *Mohamad v. Malkar*, 10 Cal. 380.

While there is no difficulty in making the abstract statement that a suit for the recovery of a money bond is to be valued according to its market-value, the practical difficulty crops up only in its application. What is the market-value of a document? This is often times difficult to determine. Such documents as could be classified as documents of title are rightly relegated to clause iv (a) as having no market-value, for the simple reason that title deeds as such could have no intrinsic value, apart from their evidentiary value to the owner of the property to which they pertain. But the case of documents by which the payment of money is secured is different as the basis of the claim is the document itself especially in the case of negotiable instruments. How are such documents to be valued? The decision in 67 M. L. J. 680 lays down that such documents should

be held to fall under clause iv ( $\alpha$ ). That is, it is held that they are incapable of valuation. It is always a question of fact whether any property sought to be recovered has or has not a market-value. When no relief is sought under the negotiable instrument but the same is sought to be recovered as a chattel, the approved view seems to be to hold that it has no market-value. A possible view that a fixed fee under Sch. II, Art. 17 may be levied in such cases, and that the subject matter is incapable of valuation cannot be accepted as there is a specific provision in the Act, *viz.* S. 7 cl. iv ( $\alpha$ ) which provides for cases where the moveable has no value. The fixed fee will have to be levied only in the absence of any other specific provision in the Act.

#### PARAGRAPH IV: SUITS WHERE THE RELIEF IS NOT PROPERLY ASSESSABLE IN MONEY.

“ This consists of six clauses referring to six different classes of suits and all the suits in the paragraph are claims for reliefs not properly assessable in money ” per Batchelor, J., in *Dagdu v. Totaram*, 33 B. 658. They are suits for moveable property which have no market-value, for enforcing a right to a share in joint family property about the possibility of whose being properly valued there is quite a conflict of decisions, suits for declaratory decree and consequential relief which have given rise to numerous divergent views as to what is the primary and what is the auxiliary relief, for injunction and for easement the value of which is not capable of being correctly estimated and for accounts which at best could only be approximately valued. Consequently in all these cases the plaintiff or appellant is given the liberty to value his claim as he chose and this determines both the court-fee and the valuation of the suit for jurisdiction. “ The nature of the suits comprised in the six articles of that clause which in some instances renders it impossible, and in others either impossible generally or extremely difficult to lay down an even approximately fair *ad valorem* scale as a means of fixing the court-fee in such suits, would appear fully to account for the Legislature leaving it to the plaintiff to name the valuation,” per Westropp, C. J., in *Manohar v. Bawa Ram*, 2 Bom. 219. This has been found by experience not to work well in practice. The reason for same is obvious, as every plaintiff or appellant always endeavours to shape his action in such a way as to bring it within the four corners of one or the other clause of this paragraph to enable him to put his own valuation on the claim both in the matter of payment of fees and for the purpose of choosing his forum. In their efforts to defeat such abuse of the privilege granted and a gross under or over valuation of the claim and at the same time give effect to the actual words of the section which make the plaintiff or appellant the sole person entitled to fix the valuation, courts have to strain the plain language of the section and this has resulted in a good deal of

conflict between the decisions of the several High Courts as will be noticed from the decisions cited below.

Formerly there was an additional clause at the end of this paragraph—"and the provisions of the Code of Civil Procedure, section 31, shall apply as if for the word "claim" the word "relief" were substituted." The C. P. C. in force at the time of the Act was that of 1859, and section 31 of that Code corresponds to Order VII, Rule 2 of the present C. P. C. The additional clause was repealed by Act XII of 1891. In 11 Calcutta Weekly Notes 705 it was contended that whatever power the court had to interfere with the plaintiff's own valuation was taken away by this repeal, but the court held that the repeal was made because the clause in the Act was superfluous, in view of the change in language in section 54 of the C. P. C. of 1884 from "claim" to "relief sought" as in the Court-Fees Act itself, that the repeal has not therefore made any change in law, and that the court has still powers to determine the value where the plaintiff has not fixed a reasonable value. It is thought in some quarters that this controversy has been settled by the decision of the Privy Council in *Sundara Bai v. Collector of Belgaum*, 43 B. 376 (P. C.), which affirmed a decision of the Bombay High Court as to a question of limitation. The suit there was for declaration and consequential relief coming within section 7, clause iv (c), and the Bombay High Court's decision that the arbitrary value put by the plaintiff upon the plaint determined the value of the suit both for purposes of court fee and jurisdiction, was also incidentally affirmed by the Privy Council. As there has been no express decision of Privy Council on the point, the controversy still exists.

It has been held in the following cases that where the valuation put by the plaintiff is arbitrarily low and inadequate, the court has got the power to determine the proper value of the claim. *Umatul Batul v. Nanji Kuar*, 6 C. L. J. 427; *Krishna Das v. Haricharan*, 10 I. C. 865; *Harimohun v. Surendranath*, 31 C. 301; *Raj Krishna v. Bepin*, 40 C. 245; *Kaltiya Pillai v. Ramaswami Pillai*, 56 M. L. J. 394. In *Rajendra Baksh v. Mt. Bahu Rani*, 107 I. C. 330=1928 Oudh 260, and *Moung Noe v. Moung Kha Pu*, 142 I. C. 705=1933 Rang. 40, it was held that where the plaintiff makes an absurd and outrageous misrepresentation as to the value of his suit, the court can interfere with his valuation by invoking its powers under s. 151, C. P. C. *Manick Chandra Sarma v. Danbhandar Sarma*, 1930 Cal. 41; *Nadir Khan v. Firm of Cox's and King's Shipping Agency*, 1931 Sind 15; *Sitaram Singh v. Maharaja Kesho Prasad*, 1931 Pat. 195=131 I. C. 888.

On the other side of the line fall the following cases that hold that the discretion of the plaintiff is absolute and that the same could not be curtailed in any way by courts. *Rupchand v. Kihirodamayi*, 27 C. W. N. 457; *Jogendranath v. Tariatnessa*, 35 C. L. J. 144;

*Jogeshara v. Durga Prasad*, 36 A. 500; *Shama Prasad v. Sheo Prasad*, 41 I. C. 95; *Pandit Brij Krishna v. Chowdhuri Murlī Rai*, 56 I. C. 315; *Guruvaianna v. Venkatakrishnana*, 24 M. 34; *Arunachalam v. Rangaswamy*, 29 M. 922 (F. B.) (where their Lordships stated that they are not going to reopen the matter); *Thakur Das v. Dawlat Ram* (memorandum of appeal in account suit) 91 I. C. 32=1926 Lah. 189; *In re Kalipad Mukerjee*, 58 C. 281; *Maung Nyi Maung v. Mandalay Municipal Committee*, 12 Rang. 335=1934 Rang. 268.

"The plaintiff is entitled to exercise the privilege of valuing his relief at any figure he chooses." *Rikhi Kesh v. Mela Ram*, 94 I. C. 650=1926 Lah. 242; *Vachhani v. Vachhani*, 33 Bom. 307; *Balakrishna v. Janakbai*, 44 Bom. 351; *Burru v. Lachhman*, 111 P. R. 1913; *Bura Mal v. Tulsi Ram*, 9 Lah. 366=107 I. C. 609=1927 Lah. 890; *The Official Trustee of Bengal v. Gobardhan*, 33 C. W. N. 231; *Jhanda Singh v. Gulab Mel Bhagwan Dass*, 137 I. C. 240=33 P. L. R. 488; *Ghulam Haider v. Bishambar Das*, 140 I. C. 73=33 P. L. R. 458; 34 C. W. N. 870; *Basanta Kumari Debya v. Nalini Nath Bhattacharjee*, 57 C. L. J. 465. Of course the whole difficulty arises when courts detect a plaintiff or appellant avoiding the payment of a proper fee by taking shelter under this paragraph that gives them the power to fix their own value for their claim, and they feel it their duty to prevent such an evasion. This is well brought out by the observations of their Lordships in the 6 C. L. J. case where they realise the difficulty of the position and make the following guarded enunciation of the law.

"The Court *will be slow to question* the propriety of the valuation put by the plaintiff on the relief sought; but we do not think it can be affirmed as an inflexible rule of law that it is not open to the court to revise the valuation put by the plaintiff when it is conclusively established that it is arbitrary and improper." Hence also those decisions that invoke the aid of s. 151 C. P. C. to justify their interference in the matter of the plaintiff's valuation of a suit. But so far as the interpretation of the section is concerned there appears to be no difficulty. The plaintiff or appellant is given full discretion in the matter of valuation. If it leads to abuse, then it is for the legislature to step in and add a proviso to the effect that where the valuation is improper or inadequate, courts could have the same rectified. [This is done in Bengal, as noticed farther below.] The Court-Fees Act is a fiscal enactment and the principle is well recognised that it should be strictly construed and in favour of the subject. Consequently where the language of the section is plain, the importation of any limitation on the discretion allowed to the parties, is not justifiable. If the section gives a loop hole to an unscrupulous plaintiff to escape payment of the proper fee, this is again only one of the several defects cropping up in various portions of the Act, to mend or end which is more appropriately the province of the legislature than that of courts of law.

The whole question was recently considered by a Full Bench of the Calcutta High Court consisting of five Judges, and after a full discussion of the case-law, it has been held that in suits to obtain a declaratory decree or order where consequential relief is prayed for, and in suits to obtain an injunction, where the court finds the relief claimed to be under-valued, it is under O. 7, r. 11 (b) C. P. Code entitled to require the plaintiff to correct the valuation stated by him in accordance with the provisions of the Court-Fees Act. But so long as there are no rules framed under S. 9, Suits Valuation Act, the Court would have no standard before it on which it may regard the plaintiff's valuation as an under-valuation, and its powers of correction would have to be exercised on that footing. *Narayangunj Central Co-operative Sale and Supply Society, Ltd. v. Mafizuddin Ahmed*, 61 Cal. 796=38 C. W. N. 589=1934 Cal. 448 (F. B.) See also *Sailendra Nath Kundu v. Surendra Nath Sarkar* 60 C. L. J. 469. In *Krityanand Singh v. Dinn Manjhi*, 149 I. C. 109=1934 Pat. 234, it has been held that the plaintiff is entitled to place any value on the suit but the defendant can object to the valuation both as affecting the question of jurisdiction and as affecting the question of Court-fee, and when such objection is taken, the Court is obliged to enter into the question of whether the value is correct. See also *Mt. Zahur Bibi v. Sharifuddin Khan*, 1935 Pat. 68, in which it has been held that although it is for the plaintiff to state the amount at which he values the relief sought, yet it is open to the Court if a question is raised as to the true valuation, to determine such question and in any event the value sought to be put by the plaintiff must be a reasonable one.

**Bengal amendment.**—Whatever doubt there might have been as to the power of the Court to revise the plaintiff's valuation, has been removed in Bengal by the enactment of new section 8-C and the addition of the words "subject to the provisions of section 8-C." after the words "memorandum of appeal" in Cl. IV.

**Appeal Valuation.**—The value of the appeal must be the same as that of the suit unless the subject-matter is not identical. 23 Mad. 490. But there is difference of opinion on this point. See commentary under cl. (f) *supra*.

#### CLAUSE (a): MOVEABLE PROPERTY HAVING NO MARKET-VALUE.

This deals with suits for the recovery of moveable property having no market-value, while paragraph (iii) deals with similar suits where the property has a market-value. As has been observed in the commentary under paragraph (iii) above, the only class of suits that give rise to practical difficulties in assessing the proper court fee are those relating to the recovery of documents. As regards other moveable properties the fixing of the market-value is comparatively easy. Documents of title to immoveable property though it may involve

title to immoveable property has no market-value of itself. *Juggernath v. Brijnath*, 4 C. 522. A question of some difficulty arises where documents having a market-value are claimed as part of the title deeds, for instance mortgage bonds, which as usual in such cases, are discharged or cancelled instruments but not necessarily so. Where any document is claimed only as part and parcel of the title deeds, it appears that such document could not be singled out and made liable to be valued under paragraph (iii). A suit for declaration that the person really interested in a promissory note is the plaintiff and not the defendant, though it is in the defendant's name, and for recovery of the note but not for the recovery of the money due thereunder, in which the maker of the note is impleaded as defendant so that the finding may be binding on him also and there is no prayer for the recovery of the money due on the note from him, falls under s. 7, cl. (iv) (a) and not s. 7, cl. (iii) and the plaintiff has got to state the amount at which he values the relief. *Venkata Rao v. Sesharathamma*, 67 M. L. J. 680 = 1934 Mad. 730.

#### CLAUSE (b): RIGHT TO SHARE IN JOINT FAMILY PROPERTY.

**Divergent views about application of section.**—There is a conflict of decisions as regards the scope and application of this clause. The difference of view relates (1) to the class of suits to which this clause applies, (2) the method of valuation both for court-fees and jurisdiction. The question that arises is whether a suit for partition by a coparcener of joint family property is to be valued for court-fees as per section (iv) (b) or under Article 17 (6) of Schedule II and again if Article 17 (6) does not apply whether the suit, should be valued under paragraph (iv) (b) or (v) of s. 7. As already set out, it is the plaint and plaint alone that should be looked into. Even if the plaintiff's status as a coparcener is denied in the written statement court-fee is payable under (iv) (b) and not under (v). *C.R.P. 1903 of 1930, Madras High Court.*

**Joint family property.**—It is agreed on all hands that the clause applies only to cases where a relief is claimed in respect of joint family property and not to any kind of property. The word "Joint Family Property" is a technical expression under the Hindu Law.

**Suits for partition of joint family property.**—The views of the High Court of Bombay and Madras exemplify two divergent views as to how a suit for partition of joint family property is to be valued.

**Bombay.**—The leading case on this point is *Dagdu v. Totaram*, 33 B. 658. That was a suit for partition of immoveable property. The following extracts from the judgment of Batchelor, J., set out the prevalent view in Bombay. "Paragraph (iv) comprises

six different classes of suits and omitting the momentarily ambiguous class under clause (b), it is to be observed that all the suits in the paragraph are claims for relief which is not properly assessable in money. *Prima facie*, therefore, no suit to obtain possession of land, which has an easily ascertained market value, can logically be brought under paragraph (iv); in fact, so to treat a suit referring to land would throw the whole paragraph into confusion. Next, clause (b), it should be observed, refers to a suit to enforce the right 'to share' in any property, not the right to 'a share' in property. The words themselves therefore suggest that the suit is for the enforcement of what we may call an abstract claim of right and that would bring the clause (b) into proper logical neighbourhood with the other clauses of the paragraph. \* \* \* Therefore this suit properly falls under paragraph (v) of s. 7 as being a suit for the possession of land. This view receives some support from the provisions of the Suits Valuation Act, because if the suit is referred to paragraph (iv) (b) it will apparently be governed by s. 8 of the Act, and will be bracketed with other suits of a totally different character,—suits from which it appears to have been the object of the legislature to discriminate a suit for the possession of land". Of course in the above decision there is no clear statement of facts as to whether the plaintiff was or was not in joint possession either actual or constructive with the defendants. See the observations of Krishnaswami Ayyar, J., in *Rangiah v. Subramaniam*, 21 M. L. J. 21 = 9 M. L. T. 3. "During the course of argument the question was raised whether s. 7 clause (v) was not the more appropriate provision. Reference was made to *Balvant Ganesh v. Nana Chintamani*, 18 B. 209 and *Dagdu v. Totaram*, 33 B. 658, as in support of that view. *It is not clear from the facts set out in these cases whether the plaintiff was in joint possession at the date of the suit.* It is impossible therefore to rely on them as any authority for the view that s. 7 clause (v) is applicable to a suit where the plaintiff in possession seeks for partition". But with due deference to the learned judge it may perhaps be pointed out that there is an indication—slight no doubt—in the judgment of the Bombay High Court in 33 Bombay which shows that the plaintiff was not in possession of the property. Batchelor, J., observes in the course of his judgment "*prima facie* therefore no suit to obtain possession of land which has an easily ascertained market value can logically be brought under paragraph (iv), etc." "I am of opinion therefore that this suit more properly falls under s. 7, paragraph (v) as being a suit for the possession of land." The expression "a suit for the possession of land" and a suit "to obtain possession of land" indicate that the plaintiff was not in possession and prayed for same. Though it must be admitted that there is no clear statement to that effect, this decision cannot be construed to be a clear authority for the position that in Bombay, the suit by a coparcener in possession for partition is necessarily to be governed by clause (v) and not by this clause (iv) (b).



**Madras.**—So far as Madras is concerned, the matter was fully discussed in the Full Bench decision in *Rangiah v. Subramaniam*, 21 M. L. J. 21=9 M. L. T. 3. The Bombay decision of *Dagdu v. Totaram*, was considered and dissented from. White, C. J., in his leading judgment observed thus “I think s. 7 (iv) (b) applies when the right which is sought to be enforced is a right to share as a separate sharer in joint family property; in other words, it applies to the ordinary suit for partition. It was argued that s. 7 (iv) (b) only applies when the right which is sought to be enforced is a right to share as a joint sharer in joint family property but it is not likely that the legislature would have intended to make specific provision for a comparatively rare form of action and to make no specific provision for a common form of action.” Krishnaswami Ayyar, J., who concurred in the view taken by the C. J. has exhaustively reviewed the whole case law on the point. “The plaintiff being in joint possession of the whole, whether that possession is actual or constructive, seeks to convert that into separate possession of his share. It may therefore be said that the value of the subject-matter in dispute is the difference between the value of the separate possession of the share and the value of his joint possession of the whole or as it has well been put in *Rajendra Lal Goswami v. Shamacharan*, 4 C. L. R. 417, ‘It is the value of the convenience of changing the form of the enjoyment of the plaintiff’s share.’ It seems to me that it may at once be conceded that it is not possible to estimate the difference in value of this convenience in the form of the enjoyment at a money value. But this concession is not enough to settle the application of Art. 17 (vi) of the II Schedule. It is further necessary to bring the case within the Article that it is not otherwise provided for by the Act. Section 7 (iv) (b) empowers the plaintiff to state the amount of value of the relief sought. Section 7 (v) prescribes special rules for ascertaining the value. But in both the cases the fee payable is *ad valorem* under Article I of Schedule I of the Court-Fees Act. It has been argued that the language of the clause is not ‘to enforce the right to a share in the property but ‘to enforce the right to share’. This difference it is said, indicates that the clause does not deal with the common suit for partition amongst the members of a Hindu family, but with the possible case of the coparcener suing for joint possession where he has been excluded from it or for participation in the profits of the common property or it may be for a mere declaration of his right to joint possession coupled with a claim to participation in any benefit to which the joint family is entitled. Without in any way repudiating the possibility of such cases being within the scope of the clause in question (as to which compare *Gundo Anandarao v. Krishnarao*, 4 B. H. C. R. A. C. 55 and *Muttakke v. Thimmappa*, 15 M. 186 at page 191) we may ask the question whether it is at all likely that special provision is made in this clause for such rare cases without dealing with the common case of a suit for partition by a coparcener in possession. It is argued

that if a coparcener's suit for partition was intended to be covered by the clause the clause would run "in suits to enforce the right to a share in any property." But there seems to be no point in this observation for the language of the clause is more in accordance with the theory of the Hindu Law as regards a coparcener not being entitled to a definite share until actual partition. There seems to be therefore no objection to the legislature having avoided the phrase 'a right to a share' and preferred the expression 'a right to share'. I am unable therefore to accept the reasoning of the Bombay High Court in *Dagdu v. Totaram*, 33 B. 658 or of the Calcutta High Court, *Bidhata Roy v. Ram Charitra Roy*, 6 C. L. J. 651. The former of these cases is not in accord with the decision in *Motibhai v. Haridas*, 22 B. 315 and it is not clear whether it was a case where the plaintiff was in joint possession. There is no force in the remark that as the other clauses of s. 7 (iv) deal with relief incapable of valuation s. 7 (iv) (b) should only be understood as referring to an abstract claim of right, for as already pointed out, a suit by a coparcener in possession for division of his share is not capable of estimation at a money value. *It may be a good argument against allowing a suit by a coparcener out of possession for division or joint possession to fall within it.* The Calcutta case merely refuses to disturb the current of authority in that court as established by the decisions in *Krithi Churan Mitter v. Aunath Deb*, 8 C. 757 and *Mohandro Chandra Ganguli v. Ashutosh Ganguli*, 20 C. 762. Section 7 (iv) (b) does apply to a suit by a coparcener in possession for partition of joint family property. This view is in accordance with the opinion expressed in *Velu Gowndan v. Kumaravelu Gowndan*, 20 M. 289. The case in *Reference under Courts-Fees Act* s. 5, 4 M. L. J. 110, was not one of joint family property, and could not therefore fall under s. 7 Clause (iv) (b)." The above extracts and the dissenting judgment of Ayling, J., contain a clear discussion of the pros and cons of the question as to the applicability of (iv) (b) to the common form of action *viz.*, a suit for partition in a joint Hindu family. Ayling, J., did not agree with the majority of the judges that constituted the Full Bench. He agreed with the view of Batchelor and Beamen, JJ., of the Bombay High Court in *Dagdu v. Totaram*, 38 B. 658. His Lordship observes "This clause (iv) (b) appears to be designed as follows to cover merely the rare, but quite possible cases where the plaintiff's status as a coparcener is in dispute and is sought to be enforced. On this view alone its inclusion with the other cases of doubtful or difficult valuation contained in the section is intelligible." His lordship concurs with the view of Garth, C. J., in the 8 Calcutta case, as to the nature of a suit for partition and observes: "It appears to me eminently a case in which it is not possible to estimate in money the value of the suit. To tax such a suit on the partitioned share without deduction under s. 7 (v) seems to be inequitable. This point of view does not appear to have been presented to the court either in 20 M. 289, 22 B. 315 or 33 B. 658. In *Waliulla v. Durga Prasad*,

28 A. 340, the remarks of Garth, C. J., are quoted with approval. But the learned judges decided that an *ad valorem* fee was leviable under the circumstances of the case. The plaintiff appears to have been a purchaser of the undivided share of a coparcener and the suit was brought to establish his title and recover possession of his share, the claim of partition being added merely to make the relief sought effectual.' Such a case is easily distinguishable from the suit of a coparcener in joint possession, who merely seeks to convert his joint possession into separate enjoyment. In *Belvant Ganesh v. Nana Chintamani*, 18 B. 209, also, the dictum of Garth, C. J., is quoted with approval though a different decision was arrived at on what ground it is not easy to say." Finally his Lordship held that the court-fee in a suit for partition should be fixed under Art. 17 (vi) of Schedule II. But the prevailing view is that of the majority and so far as Madras is concerned where the plaintiff, a coparcener files a suit for partition of joint family property *alleging that he is in possession* thereof whether actual or constructive along with the other coparceners, clause (iv) applies. See for instance the recent decision in *Annamalai Mudaliar v. Kristappa Mudaliar*, 67 M. L. J. 858 (valuation in such a suit held to rest with the plaintiff and a court-fee of Rs. 10 held to be sufficient).

**Bengal.**—A person is not entitled to partition until and unless he is in possession of his share. But if he is out of possession, he is to bring a suit to get possession of his share and in that case he will have to pay court-fee on the market value of that share. But where plaintiff claims partition of a residential house on the footing that he is actually sitting there it is unnecessary to make him pay court-fee to recover possession. *Nanda Lal v. Kalipada Mukherji*, 54 C. L. J. 317=36 C. W. N. 291=1932 Cal. 353. The position is made clear by the Bengal Amendment Act VII of 1935. Cl. iv (b) of s. 7 the language of which has given rise to a conflict of decisions as to the class of suits to which the clause applies and the method of valuation to be adopted according to that, has been deleted and in its place a new entry V-A has been added to Art. 17 of Schedule II, by which a fixed fee is made leviable in a suit for partition and separate possession of a share of joint family property or of joint property, or to enforce a right to a share in any property on the ground that it is joint family property or joint property if the plaintiff is in possession of the property of which he claims to be a coparcener or co-owner. If in such a suit, the plaintiff has been excluded from possession of the property of which he claims to be a co-parcener or co-owner a new clause VI-A added to s. 7 provides that the suit shall be valued according to the market value of the share in respect of which the suit is instituted. Thus whatever distinction there might have been under the original Act between suits for partition of joint family property between coparceners of a Hindu joint family and suits for partition of joint property between co-owners has been abolished, the only distinction retained being that between suits for partition where the plaintiff is in joint possession of

the joint property and those where the plaintiff is excluded from such possession. Even prior to this amending Act, the Calcutta High Court made no distinction between suits by coparceners and suits by co-owners, holding that both the class of suits were governed by Art. 17 of Schedule II as being incapable of valuation, where the plaintiff was in joint possession, s. 7 cl. iv (b) being held to refer to a suit for joint possession by a coparcener who is out of possession. See *Bedhanta Rai v. Ramacharita Rai*, 6 C. L. J. 651; *Kirtee Churn Mitter v. Aunath Dev*, 8 C. 759; *Mahendro Chandra v. Ashutosh*, 20 C. 762; *Sasi Bushan v. Jotindra Nath*, 38 C. 681; *Sabjan Bibi v. Ashanulla Bepari*, 44 Cal. 524. Where the plaintiff was not in joint possession, the suit was construed as a suit for possession coming under cl. V and *ad valorem* court-fee was held to be leviable. See *Bidhata Rai v. Ram Charitar Roy*, 37 C. L. J. 651; *Nand Lal v. Kalipade Mukherji*, 54 C. L. J. 317=36 C. W. N. 291=1932 Cal. 353; *Kirty Churan Mitter v. Arinath Dev*, 8 C. 757; *Tulsi Bibi v. Furokh Bibi*, 60 C. L. J. 377=1935 Cal. 273. By virtue of new cl. VI-A introduced by the amending Act, such a suit is to be valued according to the market value of the share in respect of which the suit is instituted and not at fifteen times the net profits according to cl. V as now amended. The phrase 'right to share' in the old clause IV (b) having been amended as 'right to a share' it has resulted in there being no provision now for the valuation of a suit to enforce the plaintiff's right as a coparcener to participate in the profits of the joint family property, i.e., a suit by a coparcener who is out of possession of the joint family property to be put in joint possession of such property, to which class of suits alone the clause was held applicable in Bengal. But that is comparatively a rare form of action and cl. V is wide enough to cover such suits and that is perhaps the reason why that is omitted to be separately provided for in Bengal.

**Actual and constructive possession.**—Every Hindu coparcener is in law in possession of any and every portion of the joint family property which is in the physical possession of any other coparcener. He is in constructive possession of it. One who is admitted to be a coparcener cannot be out of joint possession and the other coparceners who admit his membership cannot deny the possession, because their possession is his possession. Unless there is a definite ouster it is a contradiction in terms for a coparcener to say that another coparcener is out of possession. A suit for possession where the plaintiff is still in the joint possession and is not ousted from possession, be it physical or constructive, that is, from any participation of joint family property, falls within the purview of s. 7 (iv) (b) of the Court-Fees Act, *Ramakrishna Iyer v. Muthuswamy Iyer*, 86 I. C. 627=1925 Mad. 468. The test in such cases as to whether there has been ouster or not is clearly set out by Wallace, J., as follows "The proper test to apply to the case will be whether if the plaint state of affairs continued for twelve years, the plaintiff would be barred from suing. If at the actual hearing of the

suit it is found as a fact that there has been an actual ouster, that the defendants have been excluding the plaintiff from all participation in the family profits because they claimed them all for themselves and none for him, then different considerations would arise and the question will have to be decided whether the plaintiff has been prior to suit, definitely ousted from even joint possession of the family property and whether he should therefore pay an additional court-fee, as in a suit for ejectment, under s. 7 (v). In the Full Bench case of *Rangiah Chetty v. Subramania Chetty*, 21 M. L. J. 21 = 8 I. C. 572 the question whether clause iv (b) would apply to a case where a coparcener is excluded even from joint possession and is suing for joint possession was raised and not decided, *the deciding factor indicated being whether the suit can be treated as a suit in ejectment*. I cannot see how the present suit can be treated as a suit in ejectment, since the plaintiff sues on the footing that the defendants admit they are holding the plaintiff's share for him and are not resisting his claim to joint possession at all, but only contest the nature and extent of the assets and mode of division."

**Suit for partition by plaintiff not in possession of the property.**—The question was raised but not decided in *Rangiah Chetty v. Subramania Chetty*, 21 M. L. J. 21 in which it was observed as follows:—"It is not necessary to express any opinion whether a suit for joint possession by a coparcener excluded from possession would fall within s. 7 clause iv (b) or s. (v) of the Court-fees Act. When such a question arises it will be material to consider whether a suit for joint possession is not as much a suit for possession as a suit for exclusive possession and whether both kinds of suits being in ejectment, they should not both be held to fall within s. 7 clause (v)." The Calcutta view was s. 7 clause iv (b) referred to a suit for joint possession by a coparcener who was out of possession, *Bidhata Rai v. Ramacharita Rai*, 6 C. L. J. 651. The leading case is *Kirtee Churn Mitter v. Arinath Dev*, 8 C. 757. That was a case for partition by a coparcener who was in joint possession of the property with the other coparceners. Garth, C. J., stated the law applicable to the case as follows: "If the plaintiff's suit had been to recover possession of or establish title to a share which he claims in his property he must have paid an *ad valorem* stamp fee upon his value of that share. But as he is already in possession of his share all that he wants is to obtain a partition, which is merely, as explained by the learned judges in the case of *Rajendra Lal Goswami v. Shama Charan*, 5 C. 188, to 'change the form of his enjoyment' of the property or in other words, to obtain a divided instead of an undivided share. It seems to me impossible to say what will be the value to the plaintiff of this change in the nature of his property and I therefore think that a stamp-fee of Rs. 10 is sufficient." So also is the view of Patheram, C. J., in *Mahendro Chandra v. Ashutosh*, 20 C. 762. "So far as the plaint is concerned the only relief which is sought is partition of property which the plaintiff says

is family property and which he says he is in possession of jointly with the others because he says the possession of one is possession of all and consequently so far as the plaint is concerned this is a suit for partition and nothing else. It may be that to decide the question what property is in the possession of one member as a member of a joint family other questions will have to be tried \* \* \* \* If the only thing to be tried is how the joint family property is to be partitioned, that is but a suit for partition." See also *Sashi Bushan v. Jotindranath*, 38 C. 681. [But the law applicable to such cases is now laid down in the Bengal Amendment Act of 1935. For fuller reference to same see under heading 'suits for partition of joint family property' *supra*.] Similar is the view prevalent in NAGPUR. See *Zakuddeen v. Sarafuddin*, 16 I. C. 771. In *Walliulla v. Durga Prasad*, 28 A. 340, it was held by the ALLAHABAD High Court that where the suit was by the purchaser of an undivided share of a co sharer and the suit was brought to establish the plaintiff's title thereto and for possession, the claim for partition having been added simply to make the relief sought effectual *ad valorem* fee was payable and that the suit did not fall under Art. 17 (vi). But the case has been explained away by Ayling, J., in the 21 M. L. J. case quoted above for the reason that the suit by a plaintiff not in joint possession stood on a different footing. According to the Allahabad High Court, a suit by a coparcener in joint possession comes within Sch. II, Art. 17 (vi). See 52 All. 756 (758). The view of the PATNA High Court also accords with that of the Calcutta High Court. *Govind v. Parameshwar*, 49 I. C. 115. "If indeed it is plain partition suit the court-fee is Rs. 10." But it is observed that "if it is in essence a suit to obtain a decree for money or a decree for immoveable property then an *ad valorem* fee must be paid." See also *Dip Chand v. Chetralal*, 56 I. C. 570. The PUNJAB High Court took the same view as the Madras High Court in *Raghbar v. Saligram*, 104 P. R. 1895. But in 2 Lah. 114 and 34 Indian Cases 857, it was held that this clause applied to a suit for joint possession and not for partition. See also *Mt. Durga Devi v. Mt. Parbati*, 141 I. C. 175 = 1933 Lah. 208, where it was held that a suit for partition of property which was alleged to be joint need only be stamped with a court-fee of Rs. 10. A Full Bench of the Lahore High Court has recently held that in a suit to enforce the right to share in joint family property, *i.e.*, a suit to be restored to joint possession or enjoyment of joint family property, court-fee would be payable under s. 7 cl. (iv) (b) *ad valorem* on the value of the relief as fixed by the plaintiff; and in a suit for partition of joint property, whether owned by a joint family or otherwise, where the plaintiff alleges that he is in actual or constructive possession thereof, the court-fee payable would be Rs. 10 under Art. 17 (vi), Sch. II. But if the court finds on a plea being raised by the defendant, this allegation to be untrue, then ordinarily the suit will be dismissed solely on the ground that the plaintiff being out of posses-

sion is not entitled to sue for partition without asking for possession of the property in dispute, unless for special reasons the court deems it proper to allow an amendment of the plaint on payment of the requisite Court-fee stamp. *Asa Ram v. Jagan Nath*, 15 Lah. 531 = 1934 Lah. 563 (F. B.)

**Different kinds of partition suits.**—The above quoted decisions clearly indicate that there is a sharp difference of opinion on this subject of valuation of a suit for partition. There are several kinds of such suits. It may be a coparcener that files the suit or it may be a stranger who has purchased the share of a coparcener. Or it may be the converse case of coparcener suing not another coparcener but a stranger. In both these cases it may be either a plain suit for partition or it may be in essence a suit for a declaration of title in the guise of a partition suit. Again the plaintiff coparcener may be in joint possession with the defendant or he may be out of possession. If he is in possession it may be either actual or constructive. If it is constructive then it is a matter of evidence or of presumption which is of course rebuttable. There might already have been a division of status and the suit may be one for the division of the property by metes and bounds. The plaintiff may sue either for joint possession along with the defendants or he may sue for partition and separate possession of a share. The court-fee payable varies in all the above cases and with regard to the prevailing views of the several High Courts. But generally they may be summarised as follows.

**(1) Where the plaintiff is a stranger.**—Where a purchaser of the share of a coparcener files a suit against the other coparceners for partition and possession, s. 7, clause (iv) (b) applies and not Art. 17 (vi) of Schedule II. *Walliullha v. Durga Prasad*, 28 A. 340. But this has been explained away by Ayling, J., in *Rangiah v. Subramania*, 21 M. L. J. 21.

**(2) Where the suit is by a coparcener against a stranger.**—Where the suit is for partition and for recovery of possession, it is clearly a suit for recovery of possession and chargeable under s. 7 (v).

**(3) Where the plaintiff is in possession actual or constructive of the property along with the defendants.**—In such a suit the value should be under cl. (iv) (b) and *ad valorem* fee is leviable according to the prevailing view in Madras. In Bombay it is doubtful whether the decision of *Dagdu v. Totaram*, 33 B. 658, applies also to cases where the plaintiff is in possession. For reasons already stated it is presumed that the view of Bombay is also the same as that of Madras. If not, the Bombay view is to the effect that s. 7 (v) applies. All the other High Courts take the view that Art. 17 (vi) Schedule II alone applies and a fixed fee is leviable. See *In the matter of Nandalal Mukerjee*, 35 C. W. N. 942. But in the case of PATNA, see *Sitbaran Jha v. Loknath Missir*, 3 Pat. 618 *infra*.

**(4) Where the plaintiff is not in possession but sues for partition and possession.**—Then the suit is one for recovery of possession the fee is leviable under para (v). *Harinarayan v. Suresh*, 63 I. C. 203; *Dagdu v. Totaram*, 33 B. 658.

Whether a plaintiff in a suit for partition has such possession or not is to be determined in view of the principle that the possession of one co-owner is *prima-facie* the possession of all the co-owners and his possession must be presumed to be in his right and title as co owner. If it is established that he is not in possession at all of any portion of the joint property and that there has been a complete ouster, he must sue for recovery of possession and partition and pay *ad valorem* court-fees upon a plaint appropriately framed for that purpose. This follows from the principle that partition signifies the transformation of joint possession into separate possession. If, however, the possession of the plaintiff is admitted or established over what forms part of the joint estate, the suit does not cease to be one for partition, merely because the defendant denies the title of the plaintiff to a share of the estate or to specific lands of the estate and asserts a hostile title and adverse possession therein. *Sabjan Bibi v. Ashanulla Bepari*, 44 Cal. 524.

**(5) When the plaintiff is not in possession but sues for joint possession.**—All the High Courts except Madras consider this as the typical case contemplated by clause iv (b). According to them, when a coparcener who is not in joint possession sues to be put in joint possession or in separate possession by partition, this clause applies. But in Madras this clause is held to apply when a coparcener in joint possession sues for partition. It would appear from the Madras decisions that a suit for joint possession or separate possession by partition by a member of joint family who is not in joint possession is a suit in ejectment as much as a suit under paragraph v. In *Rangiah v. Subramaniam*, 21 M. L. J. 21, White, C. J., observed "It was argued that s. 7 clause iv (b) only applies when the right which is sought to be enforced is a right to share as a joint sharer in joint family property, but it is not likely that the Legislature would have intended to make specific provision for a comparatively rare form of action". Krishnaswami Ayyar, J., opined that there is no tangible difference between a suit for joint possession and one for exclusive possession, and both kinds of suits being in ejectment it was thought that paragraph (v) might apply. As regards the argument that the clause applied to the possible case of a coparcener suing for joint possession, his Lordship observed "without in any way repudiating the possibility of such cases being within the scope of the clause in question, we may ask the question whether it is at all likely that special provision is made in this clause for such rare cases without dealing with the common case of a suit for partition by a coparcener in possession". This case was followed up in *Ramakrishna Iyer v. Muthuswami Iyer*, 1925 Mad. 468 = 86 Ind. Cas. 627, where Wallace J. observed "If at the actual hearing of the suit it is found



partition and states that partition and possession are essentially different remedies, the one administered formerly, before the Judicature Act in England, by the Court of Chancery and the other by the Common Law Court. The Court of Chancery had jurisdiction to pass a decree for partition only if there was no question of title or of possession to be tried between the parties. This was commonly expressed by saying that "the suit for partition is based on the assumption that there is no litigation". But if there was a question of title or of possession involved, the Court of Chancery declined to go on with the partition suit until those questions—the litigation between the parties—had been determined by the court of law. A party out of possession and seeking partition must first go to a court of law and ask for joint possession and then go to the court of equity and ask for partition. Though after the Judicature Act the same court can now both adjudicate on disputed questions of title and award partition, the change introduced by the Act is only a change in procedure, not in substantive law. The causes of action are entirely different. The Allahabad High Court on the other hand holds partition is asked for only to make possession effectual and that therefore the court-fee is payable only for the latter. 28 All. 340.

A claim before a survey officer or an entry made in his survey records amounts to an assertion of adverse title. In a suit for partition therefore, the plaintiff must clear up his title and possession over the plots recorded adversely to him in the survey records and pay *ad valorem* court-fee with reference to such property. *Harinarayan v. Suresh*, 63 I. C. 203.

**(7) Where there has been an antecedent division of status and the suit is for partition by metes and bounds.**—The correct method of regarding the relief claimed in a suit for partition by metes and bounds by one member of the Hindu Joint Family which has already become divided in status against the other members is that it is merely a prayer to change the form of enjoyment and can only be valued by deducting from the value of the plaintiff's share as ascertained in the partition the value of his beneficial enjoyment as coparcener before partition. In such a case it is impossible to estimate the money value of the suit and the suit is governed by Art. 17-B of Schedule II. *P. Suryanarayana v. P. Seshayya*, 90 I. C. 843 = 1926 Mad. 122; *Srinivasa Ayyar v. Krishnaswami Ayyar*, 59 M. L. J. 913. An allegation of division in status in the plaint is enough to bring it under Art. 17-B (Mad.). *Secretary of State v. Lakhanna*, 64 M. L. J. 24 = 1933 Mad. 430; *Manikkam Pillai v. Murugesam Pillai*, 64 M. L. J. 576 = 1933 Mad. 431. It is not the function of the Court to ask itself whether the allegation is true or probable. *Secretary of State v. Lakhanna*, 64 M. L. J. 24 = 141 I. C. 80 = 1933 Mad. 430. The correct method of computation of court-fee in suits where partition is claimed by a coparcener who is in joint enjoyment of part of the property at the date of the suit is to determine whether merely a change in the

mode of possession is asked for, or whether in reality the relief of ejectment is claimed. *Bhagwan Appa v. Shivalla*, 101 I. C. 770 = 1927 Nag. 248.

**(8) Declaration regarding impartibility of property.**—

Where in a partition suit, property alleged to be wakf property and hence impartible, having been declared partible by the preliminary decree, it amounts to a declaration and an appeal against that decision need not bear an *ad valorem* stamp as there is no decree for possession. *Rekhi Kashi v. Mela Ram*, 1931 Lah. 170.

**Joint property and joint family property.**—Joint family or coparcenary property is that in which every coparcener has a joint possession. The conception of joint family property is one peculiar to Hindu Law. It is not the same as the joint property of the English Law. Strangers could be joint tenants but they could not hold property as a joint Hindu Family. *Karsands v. Ganga Bai*, 10 Bom. L. R. 184. Clause iv (b) applies only to cases where the subject-matter of the suit is joint family property. Where the property is merely common property but not joint family property, this clause is inapplicable. The relevant provision is Art. 17 (vi) of Schedule II. See now Bengal Amendment Act noticed *supra*.

**Co-tenants.**—A suit for partition of immoveable property by a person who alleges he is in possession of it as co-tenant on behalf of himself and others is governed by Art. 17 (vi) of Schedule II of the Act. "There is a long course of decisions in Calcutta that a suit for a partition by a plaintiff alleging himself to be already in joint possession is incapable of valuation within the meaning of Sch. II, Art. 17 (vi) and is not governed by paragraph (v) of s. 7 and though the point was not expressly decided by the Full Bench in *Rangiah Chetti v. Subramania Chetti*, 21 M. L. J. 21, the reasoning of all the learned judges who heard the reference is in accordance with this view. The same view was taken in *Tara Chand v. Afzal Beg*, 34 A. 184. In these circumstances, we are not prepared to agree with the decision in *Referred Case No. 5 of 1884*, 4 M. L. J. 110, that the value of the subject-matter of such a suit is not incapable of valuation but easily ascertainable; or with *Dagdu v. Totaram*, 33 B. 658, assuming that the point arose in that case which is not clear. The balance of authority appears to us to be strongly in favour of the view that such a suit as the present is governed by Schedule II Art. 17 (vi), the latest case being *Ahamuddin Tamijuddin v. Aminuddin*, 44 I. C. 216." *Gill v. Varadaragavayya*, 43 M. 396. See also *Mashkurumissa v. Hashmatulla*, 20 I. C. 177.

**Suits between Muhammadan sharers.**—The properties inherited by Muhammadan sharers are not joint family properties and they hold the property as tenants in common. It has been held by the High Court of Madras in *Kurshit Kathum v. Hyder Khan*, 75 I. C. 93 = 1924 Mad. 207, that the proper Article applicable is Art. 17 (vi) of Schedule II. But it was held in *Abdul Kadir v. Bapubai*,

Bom. P. J. 1898, 135, that a suit for partition by a Muhammadan in the Bombay Presidency is hardly distinguishable from a partition suit amongst Hindus.

**Written statement claiming partition.**—Where in a suit for partition, one of the sharers impleaded as defendant asks for a decree for his share, he need not pay court-fee in order to make his claim effective *Venkatasubbamma v. Ramanadhayya*, 55 M. 975 = 63 M. L. J. 845 = 1932 Mad. 722; *Hem Chandra v. Prem Mahto*, 90 I. C. 739 = 1926 Pat. 154.

### **Jurisdiction.**

**Madras.**—Where the plaintiff is in joint possession of the property along with the defendants and files a suit for partition, he is entitled to give his own valuation. *Chelaswami Ramiah v. Chelaswami Ramaswami*, 24 M. L. J. 233 = 18 I. C. 368 (F. B.)

**Calcutta, Nagpur and Patna.**—The valuation for jurisdiction is the value of the entire property sought to be partitioned. *Edward v. Ramdhari*, 4 C. L. J. 509; *Rajam v. Rajabala*, 29 C. W. N. 76; *Munji v. Sitaram*, 1924 Nag. 105; *Bagawan Appa v. Sivappasami*, 106 I. C. 770 = 1927 Nag. 248.

**Allahabad, Bombay, Patna, The Punjab and Sind.**—The valuation is the value of the share sought to be partitioned and not the entire property. *Waja Uddin v. Walli Ullah*, 24 A. 281; *Moti Bhai v. Hari Das*, 22 B. 315; *Dukki Singh v. Harihar*, 5 P. L. J. 546; *Wadhmal v. Chellumal*, 19 I. C. 879.

## **IV (c) : FOR A DECLARATORY DECREE AND CONSEQUENTIAL RELIEF.**

**General remarks**—There is perhaps no other provision in the Court-Fees Act that has been the subject of a greater diversity of judicial decisions than this paragraph. The reason is that a plaintiff is always inclined to tack on a consequential relief to his prayer for declaration so that he may value his plaint as he chooses. Of course these attempts have been generally frustrated so far as Madras is concerned where a proviso is added to the effect that where in cases the relief relates to immoveable property, a moiety of the value as computed under paragraph (v) of this section should be taken as the correct value. Again as has been remarked by their Lordships of the Calcutta High Court in *Deokali Koer v. Keder Nath*, 39 C. 704 = 15 I. C. 427, "it is a common fashion to attempt the evasion of the Court-Fees Act by casting the prayers in the plaint into a declaratory shape."

**Scope of the clause**—This clause relates to a suit to obtain a declaratory decree or order, where consequential relief is prayed for, which is to be valued according to the amount at which the relief sought is valued in the plaint or memorandum of appeal. *Bidy Bhushan v. Kala Chand*, 1927 Cal. 775.

**Madras amendment.**—The clause has been amended by the Madras Court-Fees Act which adds a proviso to the effect that where the relief sought is with reference to any immoveable property, such valuation shall not be less than half the value of the immoveable property calculated in the manner provided for by paragraph (v) of this section. For further commentaries see below.

**Declaratory decree.**—It may be a decree of a pure and simple declaration or it may be granted in conjunction with any other relief. In cases where a simple declaration is sought the fee is a fixed one and is provided for in Schedule II Article 17 (iii). It is Rs. 10 but the amount is increased in the various Provinces by the several Amending Acts. *Vide* commentaries under Art. 17 Schedule II. In cases where the relief prayed for is not a mere declaration but it is combined with any other consequential relief, then the present clause (iv) (c) applies.

**Section 42 of the Specific Relief Act.**—The Section runs as follows; “Any person entitled to any legal character, or to any right to any property, may institute a suit against any person denying, or intending to deny his title to such character or right and the court *may in its discretion* make therein a declaration that he is so entitled, and the *plaintiff need not in such suit ask for any further relief; provided that no court shall make such a declaration when the plaintiff being able to seek further relief than a mere declaration of title omits to do so.*”

It follows from the above that the right to get a declaratory decree is dependent on the discretion of the court, that a declaratory decree confers no new right or status but simply declares the existence of such a right and that a court shall not grant such a declaration where the plaintiff being in a position to pray for further relief omits to seek such a relief. “Further the section does not sanction every form of declaration, but only a declaration that the plaintiff is entitled to any legal character or to any right to any property; it is the disregard of this that accounts for the multifarious and at times eccentric declarations which find a place in Indian plaints” (per Jenkins, C. J., in *Mt. Deokali Koer v. Kedar Nath*, 39 C. 704=15 I. C. 427.)

**Is section 42 exhaustive?**—After the passing of the Specific Relief Act, the powers of courts to make a decree merely declaratory rests entirely on s. 42 of the Act. “It is in this section apart from any particular legislative sanction that the law as to merely declaratory decrees is now to be found”. (*Deokali v. Kedarnath*, 39 C. 704). “The Court’s power to make a declaration without more is derived from s. 42 of the Specific Relief Act and regard must be had to its precise terms.” *Sheoprasan Singh v. Ramanada Singh*, 43 C. 694=33 I. C. 914=3 L. W. 544. “It is now well settled that the power of courts in India to entertain suits of a civil nature does not carry with it the general power of making declarations except in so far as such power is expressly covered by statute.” *Muhammad Fahimal Haq v. Jagal Ballo*, 2 Pat. 391=74 I. C. 403=1923 Pat. 475. “It has been

long established that the general power vested in the courts in India under the Civil Procedure Code to entertain all suits of a civil nature excepting suits of which cognizance is barred by any enactment for the time being in force does not carry with it the general power of making declarations except in so far as such power is expressly conferred by statute". *Bai Shri Vaktuba v. Thakore*, 34 B. 676 = 7 I. C. 945.

A contrary view is taken by the High Court of Madras to the effect that s. 42 is not exhaustive as regards the circumstances under which declaratory suits can be maintained. *Ramkrishna v. Narayana*, 39 M. 80 = 26 I. C. 883. *Fischer v. Secretary of State for India*, 22 M. 270 P. C., was held to be an authority for that position. See also *Ramachandra v. Secretary of State for India*, 39 M. 808 = 31 I. C. 310; *Veerana Ramaswami v. Soma Pichayya*, 43 M. 410 = 58 I. C. 585; *Sri Krishna Chandra v. Mahabir Prasad*, 1933 A. L. J. 673 = 1933 All. 488 (F. B.) In Pollock and Mulla's commentaries on the Specific Relief Act, the learned commentators observe that "Whatever doubt there may be as to the powers of the High Court to make a merely declaratory decree independently of s. 42, the courts in the mufassil had no such power at any time. The correct view, it is submitted, is that s. 42 is exhaustive of the cases in which a decree merely declaratory can be made, and the courts have no such power to make such a decree independently of that section".

**History of the section and declaratory suits.**—See the judgment of Jenkins, C. J., in *Mt. Deokali v. Kedar Nath*, 39 C. 704 = 15 I. C. 427 and that of Seshagiri Ayyar, J., in *Naganna v. Sivanappa*, 38 M. 1162 = 26 I. C. 232.

**Consequential relief.**—Consequential relief means a substantial and immediate remedy in accordance with the title which the court has been asked to declare. *Hyder Ali v. Hussain Raza*, 1 L. W. 398 = 24 I. C. 316; see also *Kalu Ram v. Babu Lal*, 54 All. 812 cited *infra*. It does not mean any other relief asked for along with the prayer for a declaration. As was held in the Privy Council case of *Rachappa v. Shidappa*, 24 C. W. N. 33, the relief must be for some additional relief *as a consequence of or auxiliary to* the declaration. In that case where there was a prayer for a declaration of title and also for injunction, it was held by the Privy Council that on the facts disclosed in the plaint, there could be no relief of injunction that could be prayed for and that in spite of the prayer for an injunction the suit was in effect one for a declaration pure and simple and that a fixed fee is leviable under Schedule II of the Act. The expression used in the proviso to s. 42 of the Specific Relief Act is "*further relief*". The object of the proviso is in the words of Muthuswami Ayyar, J., in *Kombi v. Andi*, 13 M. 75, to prevent a multiplicity of suits and to prevent a person getting a declaration of right in one suit and immediately after bring a fresh suit for the remedy already available to him. "*Further relief*" has been defined as a relief appropriate to and consequent on the right

asserted. *Narendra v. Ram Singh*, 5 O. L. J. 133=45 I. C. 859; *Erfan Mondal v. Samiruddi*, 15 I. C. 552. See also *Fakir Chand v. Anandachar*, 14 C. 586. "The expression 'further relief' does not mean 'other relief' \* \* It must consequently be relief appropriate to and necessarily consequent on the right or title asserted. *Joynarain v. Srikanta*, 26 C. W. N. 211; *Sivaramalinga v. Subharatna*, 36 M. L. J. 624. The expression would not apply to any auxiliary, equitable relief which it is in the option of the plaintiff to claim or not. *Kannan v. Krishnan*, 13 M. 324. The further relief which the plaintiff is bound to claim is such relief as he would be in a position to claim from the defendant in an ordinary suit by virtue of the title which he seeks to establish and of which he prays for a declaration. *Abdul Kadir v. Muhammad*, 15 M. 18; *Fakir v. Ananda*, 14 C. 586; *Aisa v. Bidhu*, 17 C. L. J. 30=18 I. C. 633. 'Further relief' means additional relief and not an alternative relief. *Brokles v. Snell*, 38 I. C. 123 (P. C.). Where in a suit for declaration that the plaintiff was the owner of a certain property, the plaint was subsequently amended by adding another prayer for another declaration about the invalidity of a decree, the new relief is not consequential relief within the meaning of the clause but is chargeable to a further fee of Rs. 10 under Art. 17 of Sch. II. *Lakshmi Narain Rai v. Dip Narain Rai*, 55 All. 274=1933 A. L. J. 311=1933 All. 350.

**Where prayer for consequential relief necessary.**—The plaintiff cannot be compelled to ask for any relief merely because the same could be granted to him nor could he be debarred from obtaining the relief he prays for merely because he does not seek for other reliefs which he may not want. *Ram Kamal v. Syam Sundar*, 75 I. C. 41; *Ram Sundar v. Mathra Mohan*, 80 I. C. 2. It depends on the facts of each case whether it is incumbent on the plaintiff to seek for a consequential relief. *Umaranessa Bibi v. Jamuranessa*, 37 C. L. J. 499. A suit for a declaratory decree ought not to be dismissed as barred for want of a prayer for a consequential relief unless it is quite clear that the plaintiff ought to seek further relief which he has failed to claim, although such relief flows directly and necessarily from the declaration sought for. *Aisa Siddika v. Bidhu*, 17 C. L. J. 30. Where the plaintiff has framed his suit for a simple declaration when he ought to have asked for a consequential relief also, it is not the province of the court to insist on his amending the plaint by adding a prayer for consequential relief and paying court-fees thereon. It is for the plaintiff to choose. If he goes to trial with a sole prayer for declaration, he runs the risk of dismissal of his suit. *Tikat Thakur v. Nawab Saiyid*, 2 Pat. 915=80 I. C. 544=1925 Pat. 210. See also *Brij Gopal v. Suraj Karan*, 1932 A. L. J. 466=1932 All. 560; *Mahomed Ismail v. Liyaquat Husain*, 140 I. C. 191=1932 A. L. J. 165=1932 All. 316. When considering the question of court fee, the Court is not concerned with the question as to what reliefs should have been prayed for by the plaintiff. The question must be

decided with reference to the reliefs prayed for, irrespective of the fact whether the omission of the plaintiff to ask for some further or consequential relief would or would not entail the dismissal of the suit. *Ishwar Dayal v. Amba Prasad*, 1935 A. L. J. 498 = 1935 All. 667. Order 21, r. 63 of the Civil Procedure Code gives a special right of suit to a party whose claim is rejected under O. 21, r. 58, C. P. C. and in such a case the proviso to s. 42 of the Specific Relief Act has no application. *Bhagwanlal v. Rachendra*, 1923 Pat. 564; *Kishna v. Pathma*, 29 M. 151. For cases where the plaintiff ought to have but has not asked for consequential reliefs see commentaries under Sch. II, Art. 17 (vi).

## Determination of the value of suits.

### A—General Rules

**1. The Scope of the paragraph**—The language of the plaint alone should be looked into to determine the nature of the claim and the relief or reliefs sought. *Bagala Sundari v. Prasanna*, 15 C. W. N. 823; *Sri Krishna Das v. Sat Narain*, 32 P. L. R. 729. Paragraph (iv) (c) is applicable to a suit in which having regard to the substance of the plaint, it is incumbent upon the plaintiff to obtain a declaratory decree or order to perfect his right to the consequential relief that he claims. For instance, where plaintiff seeks a relief to which he is not entitled unless and until some decree, or document or alienation of property is avoided a suit in which a declaration in that behalf is claimed is within this paragraph (iv) (c). *Maung Shein v. Ma Lon Ton*, 9 Rang. 401 = 1931 Rang. 319.

**2. The substance and not the form is material.**—As observed by Jenkins, C. J., in *Deo Kali Koer v. Keder Nath*, 39 C. 704 = 19 I. C. 427, it is a common fashion to attempt the evasion of the Court-Fees Act by casting the prayers in the plaint into a declaratory shape. See also *Idol Sri Gokal Nath v. The New Birbhoom Coal Coy.*, 80 I. C. 589; *Venkatasiva Rao v. Venkatanarasimha Satyanarayanamurthy*, 139 I. C. 317 = 63 M. L. J. 764 = 1932 Mad. 605; *Mathura Prasad v. Ram Lal*, 1934 Oudh 505. Hence it is obvious that though the form of the suit and the nature of the reliefs sought are an index to the scope of the action, still, it is the substance of the claim that counts and not the shape given to it in the plaint. When, for instance, a prayer for consequential relief is meaningless as not arising even on the averments in the plaint. (*Rachappa v. Shidappa*, 24 C. W. N. 33; *Murza Hyderali v. Syed Hussain*, 24 I. C. 316), or the same is redundant, (*Mahabir Prasad v. Shyan Behari*, 3 Pat. 795 = 1925 Pat. 47; *Ganesh v. Bani Prasad*, 91 I. C. 673; *Kattiya Pillai v. Ramaswami Pillai*, 56 M. L. J. 394), or is a vague and indefinite prayer for a further relief, it does not make a declaratory suit one for declaration with consequential relief. The converse is equally good where the facts disclosed require a consequential relief to be prayed for, the prayer for a mere declaration does not affect the real nature of the suit which is held to be one for

declaration with consequential relief. *Gangadhar v. Ram Debandra-bala*, 5 P. 211; *Krishnadas v. Haricharan*, 14 C. L. J. 47; *Deo Kali v. Kadernath*, 39 C. 704; *Hukam Singh v. Musst. Gyan Devi*, 36 I. C. 95 = 87 P. R. 1916; *Nga Chit v. Wat Kwanan*, 33 I. C. 624; *Babu Ras v. Balaji*, 1929 Nag. 71.

### B—Specific Instances.

**1. Suit for accounts.**—A suit for a declaration that the defendant is liable to render accounts does not cease to be a suit for simple declaration merely because there is coupled with it a prayer that the plaintiff may be permitted to inspect the books of account; but it would be otherwise if there be a prayer for injunction regarding the account books or property in the hands of the defendants. *Manohar Ganesh v. Bawa Ram*, 2 B. 210; *Raghunath v. Gangadhar*, 10 B. 60.

**2. Confirmation of possession.**—A prayer for confirmation of possession is a consequential relief. Where a plaintiff asserting to be in possession sought to establish a will by setting aside an adverse summary order, it was held that the suit was one for declaration with consequential relief. *Dinabandhu v. Rajamohini*, 16 W. R. 213; *Rajabala v. Radhika*, 1924 Cal. 969. A prayer for confirmation of possession is nothing more than a prayer for possession. The proper value to be placed on the relief is the value of the property. *Mahabir La v. Dulhin Rajan Kuer*, 1935 Pat. 191.

**3. Injunction.**—An injunction is a consequential relief and when a declaration and injunction are prayed for, the court-fee in Schedule II of Article 17 (iii) is not sufficient. *Deokali Koer v. Babu Kader*, 39 C. 704; *King Behari v. Keshav Lal*, 28 B. 567; a prayer for permanent injunction is a prayer for a consequential relief. *Hari Sankar v. Kali Kumar*, 32 C. 734 = 9 C. W. N. 690; *Rai Charam v. Kunj Behari*, 46 I. C. 884; *Rajabala v. Radhika*, 1924 Cal. 969; *Rahim Bai v. Mariam*, 34 B. 267; *Vaiyapuri v. Ramachandra*, 21 L. W. 679 = 89 I. C. 930 = 1925 Mad. 1143; *Abdul v. Muhammad*, 15 M. 15; *Srinivasa v. Srinivasa*, 16 M. 31; *Velu Gounden v. Kumaravelu*, 20 M. 282; *Vachami v. Vachami*, 33 B. 307; *Jagesh Rao v. Durga Prasad*, 13 I. C. 408; *Gangadhar Misra v. Rami Debendrabala*, 5 Pat. 211 = 94 I. C. 22 = 1926 Pat. 249; *Jhanda Singh v. Gulab Mal Bhagwan Doss*, 137 I. C. 240 = 33 P. L. R. 488. If the prayer is only for a mere injunction, clause (iv) (d) is applicable. Where a plaintiff is out of possession of property, he cannot sue for declaration and injunction. *Rathna Sabapathi v. Ramaswami*, 33 M. 452 = 5 I. C. 630 = 20 M. L. J. 301. See also *Deiva Sikamani v. Subbiah*, 4 I. C. 1131. In a suit for declaration of title to land a prayer for injunction against the defendant is a prayer for a consequential relief as much as a prayer for confirmation of possession. *Dinanath v. Ramnath*, 23 C. L. J. 561 = 34 I. C. 702. Where the property was in the possession of the Collector, the prayer for injunction against the defendant was held unnecessary and a simple prayer for declaration was held sufficient. *Rachappa*



v. *Shidappa*, 43 B. 507 (P. C.) Where the prayer for a declaration that a certain fine should not be imposed and for an injunction restraining the Government from collecting the said specified amount of fine, it was held that the consequential remedy sought for is not the recovery of the amounts which have not yet been imposed but a permanent injunction restraining its realisation. The value of the injunction to the plaintiff is really the value at which the injury to the plaintiff should be assessed. *Grish Chandra v. Secretary of State for India*, 105 I. C. 80=1928 Cal. 55. Where a declaration of a right of way is prayed for and mandatory injunction for removal of a fence, the relief should be valued under (iv) (c) and the Madras proviso did not apply. *In re Venkatakrishnan Patter*, 52 M. L. J. 121 = 100 I. C. 263=1927 Mad. 348. For a fuller discussion of this decision see under clause (d) *infra*. A suit by a reversioner against a Hindu widow for a declaration that her acts amounted to waste and for an injunction restraining her from committing waste of the estate falls within clause (iv) (c), *Krishna Rao v. Chandrabaghabai*, 1924 Nag. 310; *Kandhaya v. Jagranikuar*, 79 I. C. 358. See also 'Cancellation of documents and Decrees,' *infra*.

The section implies that the plaintiff is at liberty to assign any value to the relief he claims as regards the consequential relief of injunction. *Amdu v. Fazal*, 99 I. C. 868.

Where the plaintiff sued for a declaration that he was the owner of a shop in the possession of a tenant under the previous owner and the defendant is charged with throwing obstacles in the way of plaintiff getting an attornment from the tenant, it was held that the suit for mere declaration was maintainable and that the plaintiff is not bound to sue for any consequential relief as possession or injunction. *Gianchand v. Bhagwan Singh*, 32 P. L. R. 745.

**4. Landlord and tenant.**—Where the plaintiff, an inamdar claims to be entitled to both warams in the suit land and prays for a decree establishing his right and removing the defendants from possession on the footing that he is entitled to eject them after due notice by virtue of his right to the kudiwaram, and the tenants do not dispute his claim to melwaram, but assert occupancy right, court-fee is payable on the plaint under s. 7 cl. (iv) (c) and not under s. 7 cl. (v) or (xi) (cc). *In re Sobhanadri Rao Pantulu*, 56 Mad. 314=63 M. L. J. 759. See also *Ramalinga Mudaliar v. Ramaswami Iyer*, 29 L. W. 760=1929 Mad. 529, where the question was dealt with in order to decide the plea of *res judicata* set up in the case. But the above decision (63 M. L. J. 759) has been dissented from in a recent case where it has been held that suits for possession are in terms governed by s. 7 (v) and that the melwaram right is not in dispute makes no difference. *Maroof Sahib v. Ayyakannu Naicker*, 41 L. W. 562.

**Arrears of rent.**—Plaintiff suing for declaration of title to land need not pray for arrears of rent. *Somkali v. Bhairo*, 5 A. 55; *Fakir*

*Chand v. Annund*, 14 Cal. 586. But see *Kombi v. Anudi*, 13 Mad. 75. See commentary under para (1) *supra*.

**Assessment of rent.**—A suit for declaration and possession or in the alternative for assessment of a fair and equitable rent, is a suit for declaration with consequential relief and falls under clause (iv) (c). *Dhanukhdhari v. Mani*, 6 Pat. 17=100 I. C. 913=1927 Pat. 123. A suit for a declaration that the plaintiff is an occupancy raiyat and for settling a fair and equitable rent was held to be a suit for a declaratory decree with consequential relief. *Pajruddin v. Secretary of State*, 17 I. C. 919; *Trailokiya v. Secretary of State*, 18 I. C. 188.

**5. Pre-emption.**—A suit for pre-emption cannot contain a bare declaration to pre-empt. The right of pre-emption cannot be enforced by a mere declaratory decree as the claim for declaration must be followed by further relief in order that the order shall be effectual. *Charandar v. Amirkhan*, 57 I. C. 606 P. C.=39 M. L. J. 195.

**6. Self-acquisitions.**—A suit for the mere declaration that suit properties are self-acquired may be instituted by the plaintiff without any consequential relief. *Chabildas v. Ramadas*, 11 Bom. L. R. 606=3 I. C. 257.

**7. Recovery of possession.**—A suit cannot lie for a mere declaration of title when the plaintiff is in a position to sue for possession. *Ganapatgir v. Ganapatgir*, 3 B. 230; *Narayana v. Sankunni*, 15 M. 255; *Srinivasa v. Srinivasa*, 16 M. 34. But in *Netiram v. Venkatacharlu*, 26 M. 450, it was held that a suit for a declaration that the defendants were not the lawful trustees and for the appointment of new trustees is not barred by reason of the fact that no consequential relief is claimed even if the defendants were in possession. A plaintiff out of possession cannot merely sue for injunction but must pray for possession. *Kunjbehari v. Keshavlal*, 28 B. 597. For a suit to be barred owing to the absence of a prayer for possession, it must be shown that the defendant was in possession and that against him the plaintiff could have obtained a decree for possession. *Malaiyya v. Perumal*, 36 M. 62. In *Vedanayaga v. Vedammal*, 27 M. 591, it was held that where the possession is not with the defendant but in *custodia legis*, the plaintiff is not bound to pray for possession. Where a magistrate attached the property under s. 146 of the Criminal Procedure Code, and appointed the collector as receiver, the plaintiff need confine his prayer only to declaration and need not seek any consequential relief of possession. *Administrator General of Bengal v. Bhagawancharda*, 10 I. C. 531. Possession of receiver is court's possession. No prayer for possession is necessary. *Chintamani v. Tarak*, 35 I. C. 17; *Devarajulu v. Kondammal*, 1925 Mad. 427. So also is the possession by the Court of Wards. *Jagannath Gir v. Trigumanand*, 37 A. 185=28 I. C. 139. In *Rathnasabapathi v. Ramaswami*, 33 M. 452, it was held that a plaintiff out of possession

is not entitled to ask merely for an injunction against a person in possession. He must pray for possession.

**8. Wrong imposition of tax.**—A suit for a declaration that the imposition of tax and compensation under the General Police Act is invalid and an injunction restraining the defendant from collecting the amount falls within clauses (c) and (d). *Grish Chandra v. Secretary of State*, 105 I. C. 80.

**9. Partition.**—One of the incidents of joint property is that it may be enjoyed jointly; another incident is that its joint character is liable to be terminated. If a co-sharer is content to enjoy joint property as such there is no reason why he should be driven to seek for partition merely because his co-sharer chooses to dispute the extent of his share. Where the plaintiff is in joint possession of immovable property whether such possession be actual possession of his share of the whole or actual possession of a part coupled with constructive possession of the remainder he is entitled to maintain a suit for declaratory relief with a view to remove a cloud on his title created by the act of the defendant disputing his share. In a suit so framed, declaration of title is all that the plaintiff needs and he cannot consequently be called upon to ask for consequential relief by way of partition. The Proviso to s. 42 of Specific Relief Act forbids a suit for a pure declaration without further relief but it does not compel a plaintiff to sue for all the reliefs which could possibly be granted or deter him from obtaining a relief which he wants unless at the same time he asks for a relief which he does not want. *Joi Narain v. Suchita Debya*, 65 I. C. 8=26 C. W. N. 206; *Asman Singh v. Tulsi Singh*, 2 P. L. J. 221; *Chinnamal v. Varadarajulu*, 15 M. 30. On the other hand it was held in *Suryanarayana v. Thammanna*, 25 M. 504, that where a plaintiff sued for a declaration that a will of ancestral property by the father was invalid and that the plaintiff was entitled to it by survivorship, there could be no simple declaration and that he must sue for partition even though the property was in the possession of tenants. See also *Srinivasa v. Srinivasa*, 16 M. 31; *Bara Mulla v. Julsi Ram*, 107 I. C. 609. So also a stranger purchaser of a portion of joint family property from an undivided coparcener should file a suit for partition and not merely for declaration. *Ganapati v. Butcha*, 20 M. L. J. 759=5 I. C. 921; *Chinna v. Surya*, 5 M. 196; *Subramanya v. Padamannava*, 19 M. 267. Where the plaintiffs prayed for a decree declaring a prior partition and certain alienations not to be binding on them and further prayed for a repartition and possession, it was held that the suit had not to be valued on the value of the entire family property but only on the plaintiffs' shares and that the declarations sought were ancillary to the prayer for possession and the case fell within s. 7 cl. (iv) (c) and not under s. 7 cl. iv-A (Mad.) *Koraga Gowda v. Somappa Gowda*, 140 I. C. 585=36 L. W. 793.

**10. Appointment of a receiver.**—The prayer for the appointment of a receiver in a suit by a Hindu reversioner for declaration

that an alienation by the widow is not binding on the reversioners cannot be regarded as a "consequential relief" within s. 7 (iv) (c) of the Court-Fees Act since both the reliefs are unconnected and independent of each other as the prayer for the appointment of a Receiver had no connection with the specific alienation sought to be set aside. The proper court-fee payable is for declaration under Schedule II Article 17 (A) and for receiver under Article 17 (B). *Karuppanna Thevar v. Angammal*, 96 I. C. 129=1926 Mad. 678=51 M. L. J. 67. But see *Krishna Row v. Chandrabagabai*, 79 I. C. 668=1924 Nag. 316, where the relief for the appointment of a Receiver was considered in the nature of consequential relief, as the relief was based on and connected with the relief of declaration. Where the plaintiff sues for a declaration that he is the next presumptive reversioner, that the alienations made by the widow are not binding on the reversioners and that a receiver may be appointed for the management of the property, it has been held that the prayer regarding the appointment of a receiver is a consequential relief and that *ad valorem* fee is payable on the value of property. *Chatarpali v. Kalap Dei*, 1931 A. L. J. 837.

**11. Suit by defeated claimant or decree-holder.**—Where a defeated claimant files a regular suit under O. XXI, R. 63 C. P. C. the suit falls under Sch. II, Art. 17, cl. 1. But where the judgment-debtor is also impleaded as a defendant and possession of the property is prayed for against him then the fee is leviable under para iv (c) of this section. *Chandradhan Singh v. Tipon Prosad*, 43 I. C. 971=3 Pat. L. J. 482. A suit by a decree-holder for a declaration to the effect that a gift deed and a sale deed executed by the judgment-debtor are fictitious and void, and the properties covered by them are capable of being attached in execution of his decree, is purely a declaratory suit without consequential relief as the prayer for declaration is implied in the prayer that the deeds shall be void. Hence no *ad valorem* fee is chargeable. *Ram Dayal v. Baldeo Prasad*, 1931 Oudh 72. Where plaintiff sues for declaration that his share in certain property is not liable to attachment and sale in execution of a decree against his father, the suit is one for a mere declaration without consequential relief and *ad valorem* court-fee need not be paid on the amount due under the decree. *Adeshwar Prasad v. Badami Devi*, 148 I. C. 908=1934 Oudh 212.

**12. Suit by landlord.**—A suit by a landlord for declaration of title and possession or for assessment of rent is held to be a suit for declaration with consequential relief. *Dhanukdhari v. Mari*, 6 Pat. 17=100 I. C. 913=1927 Pat. 123. For a converse case of a suit by a tenant see *Ram Ekbal v. Baldeo Singh*, 25 I. C. 507. A suit for a declaration that certain leases in respect of debutter property were illegal and invalid and for possession of the property covered by the leases is governed by s. 7 (iv) (c) and must be valued at the valuation of the lease-hold interests created by the leases in question and not the value of the properties themselves, and the

plaintiff is entitled to put his own valuation. *Sailendra Nath Kundu v. Surendra Nath Sarkar*, 62 Cal. 417=60 C. L. J. 469=1935 Cal. 279.

**13. Suit by tenant.**—Suit by a tenant that he is an occupancy tenant and that the entries in the Survey Registers are wrong is held to be a suit for simple declaration, the consequential relief being redundant. *Tewari Kora v. Bhupat*, 50 I. C. 291. But see contra *Midnapore Zemindary Co. v. The Secretary of State*, 44 C. 352=40 I. C. 96, where on a strict construction of s. 111-A of the Bengal Tenancy Act, it was held any relief beyond a bare and simple declaration, amounted to a consequential relief. If there was no simple prayer for declaration but also coupled with that a prayer that a fair and equitable rent be settled then the suit is assessable under cl. iv (c). *Pajiruddin v. Secretary of State*, 17 I. C. 919; *Trilokya v. Secretary of State*, 18 I. C. 188.

**14. Suit by trustee.**—Suit for declaration that plaintiff is a trustee and for injunction restraining the defendant from interfering with plaintiff's management of the properties is a suit falling under para iv (c). *Mohendra v. Dinabandhu*, 21 I. C. 771; *Raj Krishna v. Bebin Behari*, 40 C. 345=17 I. C. 162. It is the substance and not the form of the prayer that is material. Where a person prayed for a declaration that he had an *exclusive* right of management of certain properties, it was construed to be a prayer for declaration coupled with one for injunction and para iv (c) applied. *Raghunath v. Gangadhar*, 10 B. 60; *Mammi Lal v. Radhey Gopal*, 47 All. 51=1925 All. 602. Where the plaintiff prayed that a decree may be passed for the removal of the defendant from the office of shebait of a private debutter, for a declaration that the defendant had no shebait right, for an injunction restraining waste and for the appointment of the plaintiff as a shebait, it was held that he need not pay court-fee on the value of the debutter properties as there was no prayer for possession. *Hridoy Kishore Nandi v. Hari Bhushan Dey*, 58 C. L. J. 171.

**15. Suit for restitution of conjugal rights.**—Suit by a husband for a declaration that a certain lady is his lawfully wedded wife with for a prayer restitution of conjugal rights, was held to fall under para iv (c). *Aminul Hussain v. Khairnessa*, 28 C. 567. So also a suit by a husband for restitution of conjugal rights with a prayer for an injunction restraining the wife's parents from obstructing recovery of the wife. *Gajendra Nath Saha Chowdhury v. Sulochana Chowdhurani*, 39 C. W. N. 131. The plaintiff could put his own valuation on such a suit. *Jan Mahamad v. Masher*, 34 C. 352; *Gajendra Nath Saha Chowdhury v. Sulochana Chowdhurani*, 39 C. W. N. 131; *Jair Hussain v. Khurshed*, 28 A. 545.

**16. Binami sale deed.**—Suit for declaration that a certain property was purchased *binami* in the name of the defendant is chargeable with a fee under Schedule II. *Ganishlal v. Beni Prasad*,

9 I. C. 673. But if a consequential relief as a direction to the defendant to execute a conveyance is also prayed for, then para iv (c) applies. *Dada v. Nagesh*, 23 B. 486.

**17. Compensation money.**—Suit for declaration that certain moneys deposited as compensation under the Land Acquisition Act belongs to the plaintiff is one for simple declaration with no consequential relief as the Collector who held the amount is bound to pay the same to any person who is declared by the court to be legally entitled to same. *Somu v. Vemer*, 14 M. 46.

**18. Wrong demarcation by Survey Officer.**—Suit for declaration of title to certain lands in the possession of plaintiff on the allegation that the same has been wrongfully excluded by the survey officer in demarcating his lands, is virtually a suit for possession of land. *Chockalinga v. Achiyar*, 1 M. 40.

**19. Waste by Hindu widow.**—A suit by a Hindu reversioner for a declaration that certain specified transactions by a Hindu widow amounted to waste and for an injunction restraining her from wasting the estate, was held to fall within para iv (c). *Kandhaiya v. Jagrani Kuar*, 79 I. C. 358.

**20. Suit by adopted son.**—Where the plaintiff's status as an adopted son is challenged and the suit is filed for a declaration as to his status and for recovery of possession it was held to fall under para iv (c). *Uguramohan v. Lachmi*, 1923 Pat. 100.

**21. Record of rights.**—See s. 111-A of the Bengal Tenancy Act, where it is provided that any person dissatisfied with an entry in the Record of Rights and which concerns a right of *which he is in possession* may file a suit for declaration of his rights. But where the relief is for a correction of an entry regarding his status, *ad valorem* fee is payable. *Midnapur Zemindari Co. v. Secretary of State*, 44 Cal. 352=40 I. C. 96.

**22. Suit by next friend of lunatic.**—Where the wife of a lunatic sued as manager of her husband's property for a declaration that a deed of gift executed by the lunatic, in favour of the defendant, was null and void, and for the recovery of the property conveyed by the deed, it was held as follows "The question to be decided is whether the suit is one for a declaration with consequential relief on which court-fee is payable under para iv (c) or whether it can be treated as a suit for possession under para (v). The suit as framed is clearly one for a declaration with consequential relief. It is therefore beside the mark to suggest that the suit might have been framed so as to ask for different reliefs, or in other words, that it might have been framed purely as a suit for possession." *Ganga Dei v. Shekhdeo Parshad*, 47 A. 78.

**23. Suit for declaration about cheque.**—Where there was a prayer for payment of money due under a cheque or for a

declaration relating to the endorsement of the cheque, but the Bank which was a party was later on struck off as unnecessary, the suit is one for mere declaration and *ad valorem* court-fee is not necessary. *Girdharilal v. Palaniappa Mudali*, 1929 Mad. 572.

**24. Relief regarding prior mortgage in a suit on subsequent mortgage.**—Where the plaintiff suing on a subsequent mortgage prays that the property may be sold subject to his prior mortgage the relief he seeks regarding his prior mortgage is only declaratory in nature and a fixed fee is sufficient for that, there being no consequential relief. *Ishwar Dayal v. Anna Saheb*, 1935 A. L. J. 168=1935 All. 100.

**Cancellation of instruments.**—The fee for cancellation of documents has not been specifically provided for in the Act.

**Void and voidable documents.**—Documents are either void or voidable. As to what are void or voidable documents, see s. 2 (g), (i) and (j) and s. 19 of the Indian Contract Act. Where they are void *ab initio* they need not be cancelled. *Foster v. Mackinnon*, 4 C. P. 704; *Ma Banku Behari v. Kristo*, 30 C. 433. Generally in such cases if the plaintiff is in possession, it is sufficient if he sues for declaration and if he is not in possession it is sufficient if he sues for possession alone without the necessity of praying for or having the document cancelled. *Umaranessa v. Januranessa*, 37 C. L. J. 499.

**Section 39 of the Specific Relief Act.**—It relates to cancellation of instruments. It runs as follows “Any person against whom a written agreement is void or voidable, who has reasonable apprehension that such instrument if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable, and the court may in its discretion, so adjudge it and order it to be delivered up and cancelled.”

**Even third parties can sue.**—The relief of cancellation of an instrument may be claimed not only by parties to the instrument but also by persons other than parties against whom the instrument is void or voidable. *Karam Khan v. Doryai*, 5 A. 331.

**Different kinds of suits.**—A suit for cancellation and delivery of a bond falls within clause (iv) (c) of this Act and the court has no jurisdiction to revise its valuation. *Chinnammal v. Madarasi Rowther*, 27 M. 480. Where the prayer is to the effect that a deed may be cancelled and a copy sent to the Sub-Registrar (*vide* s. 39, paragraph 2 of the Specific Relief Act), the suit is one for a declaration with a distinct prayer for consequential relief. The forwarding of the decree to the officer in whose office the instrument has been registered is a consequential relief for which the plaintiff must pay *ad valorem* fees. *Parvathi Bai v. Viswanathan*, 29 B. 207; *Noowoogar v. Shridar*, 45 I. C. 238. “Cancellation” is further relief within the meaning of s. 42 of the Specific Relief Act. A suit for declaration

and cancellation is therefore a suit in which further relief is sought. Where a Pardanashin lady sought a declaration that a document purported to have been executed by her was not really executed by her and for cancellation thereof, the prayer for cancellation was held to be a substantial relief and the suit was one for a declaration with consequential relief. *Tacoordeen v. Nawab Syed Ali*, 1 I. A. 192=21 W. R. 340 (P C.). Where the suit is for a declaration that a document does not affect plaintiff's title, it is one for declaration with consequential relief and court-fee is payable under s. 7 (iv) (c). The relief claimed is really the same whether the plaint purports to ask that a document should be adjudged voidable and declared not to affect the plaintiff's title or be set aside or cancelled. *Baburao v. Balaji Row*, 1929 Nag. 71; *Khirichand v. Meghini*, 5 Pat. 493=1926 Pat. 453=98 I. C. 432. But where the plaintiff is out of possession and is in a position to claim a decree for possession the court in exercise of its discretion may pass a decree for cancellation of the instrument according to which if genuine the plaintiff has no title to the property. *Sankarlal v. Samplal*, 34 A. 140=13 I. C. 19. An executant of a sale deed cannot obtain a declaration of his right to the property sold, unless and until he gets the sale deed set aside. *Pannabibi v. Habiba*, 6 I. C. 891.

**Conflict of decisions.**—There is a conflict of decisions between the several High Courts as to the effect of s. 39 of the Specific Relief Act. The decisions previous to the enactment of the Specific Relief Act—*Taccordin v. Ali Hussain*, 21 W. R. 340 and *Joy Narain v. Girish Chander*, 22 W. R. 438=15 B. L. R. 170—laid down that in suits to have a sale deed or a will declared a forged or fraudulent one, a prayer for a consequential relief of the cancellation of the instrument was necessary. But after s. 39 of the Specific Relief Act was enacted the question arose whether the prayer for a cancellation of the document was still necessary and whether a prayer for a simple declaration would not suffice. The view of the BOMBAY High Court is that a prayer for a bare declaration would be sufficient. *Srimant Sagaji Rao v. Smith*, 20 B. 736, while the High Courts of MADRAS, PATNA and LAHORE hold the contrary view. *Samia Mavali v. Minammal*, 23 M. 490; *Narayana v. Ayya Pattar*, 7 M. H. C. R. 372; *Parathayi v. Sankumani*, 15 M. 294; *Noowoogar v. Sridar*, 45 I. C. 238; *Hukkum Singh v. Gyan Devi*, 36 I. C. 95; *Namak Chand v. Jewan Mal*, 35 P. R. 1914. In ALLAHABAD the view is taken that a suit for the cancellation of the instrument falls under the residuary article Sch. I Art. 1. This overrules the earlier decision of that court in *Karam Khan v. Daryai Singh*, 5 All. 331. Their Lordships observe as follows:—"If a substantive relief is claimed though clothed in the garb of declaratory decree with a consequential relief, the court is entitled to see what is the real nature of the relief and if it is satisfied that it is not a mere consequential relief but a substantial relief, it can demand the proper court-fee on that relief irrespective of the arbitrary valuation



put by the plaintiff in the plaint on the ostensible consequential relief." "The expression "consequential relief" in s. 7 (4) (c) means some relief which would flow directly from the declaration given, the valuation of which is not capable of being definitely ascertained, which is not specifically provided for anywhere in the Act and cannot be claimed independently of the declaration as a substantive relief. . . . Where a suit is for the cancellation of an instrument under s. 39, Specific Relief Act, the relief is not a declaratory one. It falls neither under s. 7 cl. 4 (c) nor under Sch. II Art. 17 (3) but under the residuary article Sch. I, Art. 1." *Kalu Ram v. Babu Lal*, 54 All. 812 = 139 I. C. 32 = 1932 A. L. J. 684 = 1932 All. 485. See also *Suraj Ket Prasad v. Chandra*, 1934 A. L. J. 955 = 1934 All. 1071, holding that a suit for declaration that a compromise and a decree thereon are improper and void as against the plaintiff and do not in any way affect the plaintiff's rights, is one really for the cancellation of the compromise, and an *ad valorem* court-fee must be paid under Sch. I, Art. 1. So also a suit for a declaration that a sale deed executed by the plaintiff is void and ineffectual against him, when it implies a prayer for cancellation, and *ad valorem* court-fees must be paid under Sch. I, Art. 1. Sch. II, Art. 17 (3) does not apply to the case because the plaintiff wants something more than a bare declaration. *Akhlaq Ahmed v. Mt. Karam Ilahi*, 4 A. W. R. 1142. For the view of the Oudh Court, see *Raunaq Ali v. Imanunessa*, 138 I. C. 147 = 9 O. W. N. 440 cited *infra*. The RANGOON High Court has recently held that where a plaintiff sued alleging that he was a minor at the time of the execution of a mortgage deed by him and it was therefore void against him, all that was necessary for the plaintiff was to ask that the document be declared to be void against him and that the suit need not be treated as involving a prayer for a consequential relief, namely, the setting aside of the document. *Yu Hock Tun v. Yu Hock*, 11 Rang. 66 = 1933 Rang. 109. But see *Nga Chit Wat v. Kwanan*, 33 I. C. 624.

In the above quoted decision of *Narayan Patter v. Ayya Patter*, 7 M. H. C. R. 372, the plaintiff had executed a document whereby he created a charge on certain immoveable property and a suit was brought to cancel that document. It was held that as the plaintiff had executed a document of legal validity and created a charge for the specified amount, the cancellation of that document was a relief of a very substantial character and very far from being a mere declaration. The suit was treated as one for declaration with consequential relief. To the same effect is the decision in *Parathayi v. Shankumani*, 15 M. 294. These were approved in *Samiya Mavali v. Minammal*, 23 M. 490. Later on in *Chingachan v. Chingachan*, 30 M. 18, the Lordships expressed the opinion that where it is incumbent upon the plaintiff to get the document set aside before he could question it, it must be treated as involving a prayer for consequential relief and the provision of cl. (iv) (c) would be applicable. Again in *Achammal v. Achammal*, 20 M. L. J. 791, the suit was instituted by 25 persons of whom

all excepting one were parties to a sale deed which was sought to be declared to be invalid. It was held that so far as those plaintiffs who were parties to the deed were concerned, if a declaration were given the result would be the same as if that deed were cancelled and that therefore *ad valorem* stamp fee must be paid by them. See also *Kalavia v. Secretary of State*, 29 B. 19 and *Harihar v. Shyamlal*, 40 C. 615. In *Chinnammal v. Madarasa Rowther*, 27 M. 480, which was a suit for cancellation of and delivery of a mortgage for Rs. 4,000 and was valued at Rs. 50 by the plaintiff the court held that the plaintiff's valuation should be accepted as the suit fell under clause iv (c). The question was considered by a Full Bench of the High Court of Madras in *Arunachallam v. Rangaswami*, 38 M. 922. The whole case law on the point was reviewed and their Lordships laid down the law as follows :

"In *Achammal v. Achammal*, 20 M. L. J. 791, it was held that though only a declaration was asked for, the suit was one for cancellation and that clause iv (c) applied. The statement in the judgment that an *ad valorem* fee was payable does not mean that clause iv (c) was not applicable because the fee payable in suits falling under this clause is *ad valorem*, though under the provisions of the section it is computed according to the amount at which the relief sought is valued in the plaint. The decision in *Harihar Prasad Singh v. Shyam Lal*, 40 C. 615 is to the same effect. Following these authorities we are of opinion that a suit of the nature indicated in the reference which merely asks for a declaration is none the less a suit for a declaratory decree with consequential relief within the meaning of clause iv (c)". Thus it was held that a suit for a declaration that a mortgage decree is not binding on the plaintiff and for an injunction restraining the defendant from executing the same, is a suit for a declaratory decree with consequential relief within the meaning of s. 7 clause iv (c) of the Court-Fees Act and *ad valorem*, fee is payable on the valuation fixed in the plaint. "Where a party executes a document or a decree is passed against him, *prima facie* such a decree or deed is binding on him. Until it is set aside it cannot be treated as void. The decree therefore declaring that the deed or decree is not binding on the plaintiff has the effect of cancellation of the deed or decree. It is not a mere declaratory decree. The case might be different where a declaration is sought by a person who is not a party to the bond or the decree. In a case like that the suit may properly be regarded as one for declaration but in the other case it is more properly a suit to get rid of an already existing obligation." Where a plaintiff who is not a party to a deed wants a declaration that the deed is not binding on him or on the devaswom of which he is a trustee, the suit is one for declaration and not for cancellation. *Vellora Karuppan v. Kutty Nair*, 1924 Mad. 611 = 78 L. C. 118. See also the decision of the Oudh Court to the same effect in *Daya Shanker v. Mahomed Ibrahim Khan*, 141 I. C. 798 = 1939 Oudh 116. A suit by a member of a joint Hindu Family for

a declaration that a mortgage by his coparcener is not binding on him or his share falls under Article 17 (3) of Schedule II of the Act. *Shandas v. Charamdas*, 78 I. C. 782. Where the suit is for a declaration that a deed of gift executed by a person in favour of the defendant was illegal and ineffectual as against the plaintiff and that the defendant had no right to interfere with the possession of the plaintiff, a fixed fee is sufficient. *Abdul Samad Khan v. Anjuman Islamia*, 1933 A. L. J. 1537. Where the plaintiff prayed for a declaration that a deed of shankalap executed by her in favour of the defendant was invalid and ineffectual as against her on the ground of coercion and undue influence, and alleged that she continued in possession of the property to which the said deed related, the Oudh Court held that a fixed fee of Rs. 10 was sufficient. *Pateraji v. Radha Bakhsh Singh*, 142 I. C. 699=1933 Oudh 127. See also *Raunaq v. Imamunissa*, 138 I. C. 147=9 O. W. N. 440.

In *Kattiya Pillai v. Ramaswami Pillai*, 56 M. L. J. 394=1929 Mad. 396, it was held that the proper court-fee payable in a suit for declaration that a will is a forgery and for cancellation of the will and the Sub-Registrar's order registering the same, is that specified in Article 17-A (1) of Schedule II of the Court-Fees Act and not that specified in s. 7 iv-A or iv (c) as the second and third prayers are not consequential reliefs but unnecessary and superfluous. If the court finds the will void, the court is bound to order the cancellation of the will and to send a copy of the same to the Registrar who in turn shall note in his book that the instrument has been cancelled. The plaintiff cannot value the same arbitrarily for purposes of jurisdiction; but is bound to value it according to the market-value of his interest in the properties. The substance and not the form of the relief is the proper test.

Where a member of a joint Hindu family filed a suit for a declaration that a mortgage executed by another coparcener is not binding on the joint family property, it is not necessarily a suit for cancellation of the document. It was held that Art. 17 (3) of Sch. II alone applied. *Shama Das v. Churn Das*, 78 I. C. 788=1925 Lah. 90. But where the executant files a suit for cancellation of the instrument paragraph iv (c) was held to apply. *Devidas v. Ramlal*, 13 I. C. 864; *Sit Soe v. Ma Thin*, 1924 Rang. 378=84 I. C. 201.

"It is a common fashion to attempt an evasion of court-fees by casting the prayers in the plaint into a declaratory shape. The court must therefore look into the substance of the relief claimed. When the allegations in the plaint clearly show that the plaintiff virtually seeks the cancellation of certain deeds, though in form the suit is declaratory, the suit is one for a declaration with consequential relief, falling under s. 7 (iv) (c) and *ad valorem* court-fee must be paid," *Mathura Prasad v. Ram Lal*, 152 I. C. 312=1934 Oudh 505.

The plaintiff brought a suit for a declaration that certain alienations made by the 1st defendant their father in respect of certain items

of property were not valid and binding as against their share and for partition and possession of their share in those and other plaint properties. The plaint properties were the joint properties of the plaintiffs and the 1st defendant who was the family manager. The alienations in question were made by the 1st defendant not only as manager but also as the guardian of the plaintiffs. It was held that the suit though in form one for a declaration, was really one for setting aside or for cancellation of the sale deed to which the plaintiffs were parties and which *prima facie*, bound them, and must be valued as such for purpose of court-fee and jurisdiction. It was further observed as follows "These alienations were made by the father of the plaintiffs not only as the manager of a joint Hindu family but also as their guardian. \* \* The minors are parties to these alienations which are *prima facie*, binding on them. The power of a Hindu father may be more or may be less than the power of a guardian to bind the minors, but unless it can be established that the alienations were for unnecessary or illegal purposes the alienations are *prima facie* good. *Subba Goundan v. Krishnamachari*, 45 M. 449. In *Uni v. Kuchiamma*, 14 M. 26, the document was not executed by the plaintiffs or by any person under whom they claimed. *Kamaraju v. Gunnaya*, 45 M.L.J. 240, was not a case of court-fee. \* \* \* *Achammal v. Achammal*, 20 M.L.J. 791, is a case very similar to the present, where all the plaintiffs but one were parties to the deed through their mother as guardian and it was held that a suit in which the plaintiffs ask for a declaration that a *Jenn sale* deed of the suit properties was not valid and binding on their tarwad must be treated as a suit for the cancellation of the deed and an *ad valorem* fee was requisite. Further, it was held that the application of any particular clause of s. 7 must depend on the substance of the claim and not on the mere words used in the plaint. In 1922 by Madras Act V of that year a further clause iv-A was added to s. 7 whereby in a suit for cancellation of a document securing property having a money value the amount or value of the property for which the document was executed is declared to be the amount on which *ad valorem* court-fee is to be paid. See also *Logan Bart Kuer v. Khakhan Sing*, 43 I. C. 962=3 P. L. J. 92. In *Arunachalam Chetty v. Rangaswami Pillai*, 38 Mad. 932 (F. B.), it was held that a suit for a declaration that a decree or a document is not binding is a suit under sub-clause 4 (c) and must be stamped *ad valorem*. The plaint must be construed as a plaint for cancellation or avoidance of these alienations to which the minors were parties and which *prima facie* bind them." *V. N. Alagar Aiyangar v. Srinivasa Aiyangar* 50 M. L. J. 406.

But see the later decision in *Veeraraghavalu v. Srinivasalu*, 1928 Mad. 816, where it was held that the minor need not set aside the sale deed and could sue for possession ignoring it altogether. This decision however, has been practically dissented from in a later case, *Doraiswami Reddiyar v. Thangavelu Mudaliar*, 1929 Mad. 668, where it was held that a suit for declaration that a release

deed by the mother of a minor as his guardian was equivalent to setting it aside.

**Gift deed.**—A suit for declaration that a deed of gift is invalid and for possession of the property conveyed by it is a suit for declaration with consequential relief. *Musst. Ganga Dei v. Sukhdeo Prasad*, 47 A. 78 = 84 I. C. 624 = 1924 All. 612.

**Release deed.**—For a suit for cancellation of a deed of release on the ground of fraud alleged to have been practised on the executant, paragraph iv (c) is applicable. *Nanak Chand v. Jivan Mal*, 25 I. C. 435. A suit for declaration that a deed of relinquishment purporting to have been executed by the plaintiff was not really executed by him, and for cancelling the deed with the usual notice to the Registration Officer, is strictly a suit for cancellation within the terms of s. 39, Specific Relief Act and is governed by s. 7 (iv) (c). *Kadha Sundar Roy v. Saktipada Roy*, 39 C. W. N. 250.

**Lease deed.**—Suit for setting aside a lease deed and for mandatory injunction to have a building demolished is a suit for declaration with consequential relief. *Jogal Kishore v. Tale Singh*, 4 A. 320. But where the suit is laid against a lessee and a stranger and a decree for rent is sought against the lessee and against the other a decree for declaration of title and injunction restraining him from interfering with the lessee paying rent to the plaintiff, the former relief is to be valued under para ii and the latter under para iv (c). *Perumal v. Motumal* 17 I. C. 44.

**Will.**—Where the plaintiff prayed that a certain will may be declared a forgery, that it may be cancelled and that also the order of the Sub-Registrar registering it may also be cancelled, it was held that neither para iv-A nor iv (c) of s. 7 applied but that the fee was leviable under Art. 17-A (i) of sch. II and the prayer must be treated as one for declaration without consequential relief; for in a suit properly framed under s. 39 of the Specific Relief Act, for declaring a will to be a forgery the cancellation of the will and the cancellation of the order of the Sub-Registrar registering it is the function of the court and not part of the prayer in the plaint. *Kattiya Pillai v. Ramaswami Pillai*, 1929 Mad. 396.

A will becomes operative only on the death of the testator and hence during his lifetime, a simple statement by the testator regarding the character or otherwise of the will is sufficient but after his death any person seeking to avoid it must sue for its cancellation. *Hukum Singh v. Gyan Devi*, 36 I. C. 95.

**Declaration and possession.**—Such a suit *prima facie* comes within this clause. In PATNA and ALLAHABAD it is held that a suit for declaration and possession which comes within clause iv (c), and cannot be valued as a mere suit for possession at 10 times the revenue but should be valued at the market value. *Rasik Behary v. Hariday*, 1 P. 471; *Ram Suruban Prasad v. Gobind Das*, 2 P. 125; *Ganga*

*Dei v. Sukhdeo Prasad*, 47 All. 78=1924 All. 612. Where the plaintiff asks for a declaration as his first relief and possession as a second relief, it must be taken that in the opinion of the plaintiff or at least his legal adviser the declaration is a necessary relief. *Tula Ram v. Dwarka Das*, 50 All. 610=1928 All. 248. Where the plaintiff alleged the defendant had vacated his office as a Mahant of a Math by marrying and that he had succeeded to that office by virtue of his being a chela of a former Mahant and was entitled to get possession of all the properties, and sued for declaration of his title and for possession of the properties of the Math, it was held that the plaintiff before he could get possession ought to obtain a declaration in his favour that the defendant had vacated the office of Mahant and that he had succeeded to that office and that it was a suit for declaration with consequential relief and not merely a suit for possession with incidental preliminary determination of title and therefore court-fee was payable under s. 7 cl. (iv) (c) and not under cl. (v). *Ram Bhusan Das v. Bachu Rai*, 152 I. C. 1003=1934 Pat. 641. The NAGPUR and RANGOON courts also seem to be of the same view. *Babuappa v. Ramchandra*, 1929 Nag. 276 and *Maung Shein v. Ma Lon Ton*, 9 Rang. 401. According to the Oudh Court, if the principal relief claimed is one for possession and the relief for declaration is merely ancillary to it, it is enough to pay court-fee on the relief for possession. On the other hand, if the principal relief is for declaration and the plaintiff's right to possession depends upon his being entitled to the declaration, then the relief for possession must be regarded as a consequential relief and the court-fee would be payable according to the amount at which the relief sought is valued in the plaint or the memorandum of appeal. *Deoraj v. Kunj Bihari*, 5 Luck. 474=124 I. C. 420=1930 Oudh 104 relied on in *Mt Shaher Bano Begam v. Raj Bahadur Singh*, 1933 Oudh 505. But see the earlier decisions of the court on the point in *Sarju v. Sheoraj*, 1926 Oudh 380=94 I. C. 179; *Awadhraj Singh v. Dharamraji Kuor*, 1929 Oudh 419; *Afzal Husain v. Shafigunnissa*, 1930 Oudh 368=126 I. C. 688. The anomaly of valuing such a suit arbitrarily or at less than the value of a suit for possession alone is well stated in *Ram Sekhar Prasad v. Sheonandan Dubey*, 2 Pat. 198=1923 Pat. 137. "Apart from authority it is also quite clear that the interpretation put by the appellants on section 7 (iv) (c) cannot be accepted; for if pushed to its logical conclusion it would lead to manifest absurdities. It is submitted that a suit for declaration of title and recovery of possession is a suit for declaration with consequential relief. If the section is to be literally construed, then while a plaintiff suing simply for possession would under sec. 7 (v) have to pay *ad valorem* fees on the value of the property, he would by joining a prayer for declaration pay an *ad valorem* fee on whatever smaller value he chose to put upon the consequential relief", In CALCUTTA and MADRAS such a suit has to be valued as a suit for possession at ten times the revenue, *Radha Kant Saha v. Debendra Narayan*,

49 Cal. 880; *Arunachalam v. Rangasami*, 27 M. 480 (482); *Rajagopala Naidu v. Vijayaraghavalu*, 38 M. 1184. See 38 M. 922 (925) F. B. "A suit in which the plaintiff in terms prays for a declaratory decree and consequential relief *prima facie* comes within clause iv (c) of section 7 of the Court-Fees Act, but if at the same time it comes within any of the other classes of suits specified in the section, it must be treated as a suit of that description and dealt with accordingly". The recent proviso to the clause in Madras that the value of the suit when it refers to immoveable property should not be less than half the value of the property under cl. (v) in a suit for possession of it, does not affect this. It applies only when the consequential relief claimed is some thing short of possession, e. g., injunction, which can be valued arbitrarily. See the decision of Reilly, J., in *Venkatasiva Rao v. Venkatanardsimha Satyanarayanamurthy*, 63 M. L. J. 764 at 771 to the effect that the proviso merely introduces a downward limit below which reliefs sought in respect of immoveable property consequential on declaratory decrees shall not be valued and that if the relief sought properly falls within any other provision requiring a higher valuation or charge, that higher charge is to be made. This is in accordance with all the previous Madras decisions cited above, all of which are referred to in this case. The above decision of Reilly, J., is referred to with approval by Venkatasubba Rao, J., in *Maroof Sahib v. Ayyakannu Naiker*, 41 L. W. 562, and in another unreported case (C. R. P. No. 50 of 1934) in both of which it is held that that there being a special provision relating to suits for possession, the general provision contained in s. 7 cl. (iv) (c) is excluded. Where the plaintiff, an inamdar claims to be entitled to both warams in the suit land and prays for a decree establishing his right and removing the defendants tenants from possession on the footing that he is entitled to eject them after due notice by virtue of his title to the kudiwaram and the tenants do not dispute his claim to the melvaram, but assert occupancy right, it has been held that the appropriate provision for the valuation of the suit is s. 7 cl. 4 (c) and not s. 7 cl. (v) or cl. (xi) (cc) as it is a suit to obtain a declaratory decree (that he is entitled to the kudiwaram) and consequential relief of possession. *In re Sobhanadri Rao Pantulu and others*, 56 Mad. 314 = 63 M. L. J. 759 = 140 I. C. 462 = 1933 Mad. 42. See also *Ramalinga Mudaliar v. Ramaswami Iyer*, 29 L. W. 760 = 1929 Mad. 529, where the question was dealt with in order to decide the plea of *res judicata* set up in the case. These two decisions cannot be taken to be authorities for the position that a suit for declaration and possession can be valued under clause (iv) (c) in the face of the decision in 63 M. L. J. 764 and other decisions cited above. In fact in the case in 56 Mad. 314, Jackson, J., draws a distinction between a suit for possession of an inam against a rival claimant to which clause (v) would apply and the suit in question in which the plaintiff as undisputed inamdar asserts his title to the kudiwaram alone. Even as regards the latter kind of suit, the decision of Jackson, J., has been dis-

sented from in *Maroof Sahib v. Ayyakanmi Naicker*, 41 L. W. 562 referred to above by Venkatasubba Rao, J., who observes that the view of Jackson, J., in the above case seems to be based more upon some principle of natural justice than upon any provision of the Court-Fees Act and holds that suits for possession of land are in terms governed by s. 7 (v) and the fact that the melwaram right is not in dispute makes no difference. In *Venkata Lal v. Kasaldasu*, 1931 Mad. 24=33 L. W. 206=130 I. C. 449 the beneficiaries of a trust sued for possession of properties sold, mortgaged and leased by the trustees. The plaintiffs alleged the alienation to be not binding on the trust and attempted to pay a fixed court-fee of Rs. 100 under Schedule II Article 17-B. The report does not show that there was a prayer for a declaration also, but it seems to have been assumed that there was. The lower court held the suit came within clause iv (c) proviso and ordered the suit to be valued at half the market value. The plaintiffs having preferred a revision petition to the High Court, it was held that the value under clause iv (c) was only half of ten times the revenue and not half the market value. His Lordship was, however, of opinion that the suit could be valued under clause v, and observes: "The only alternative, so far as I can see, would be to bring the whole subject-matter under paragraph (v), but inasmuch as this would entail upon the plaintiffs a heavier court-fee than that already imposed upon them, it is unnecessary to consider this alternative".

**Other suits falling under the clause.**—Where a person left a will in favour of a lady describing her as his wife which status of wife was later on disputed by the reversioners to his estate who brought a suit for a declaration that his will is null and void and that the lady is not the widow of the deceased it was held that as the will had become operative after the testator's death, the plaintiff could not ask for a mere declaration but must also ask for the cancellation of the will. *Hukkam Singh v. Gyan Devi*, 36 C. 95. The question whether a plaintiff must sue for cancellation of a document under which defendant in possession claims, depends upon whether the onus of proving the circumstances establishing its invalidity lies upon him or whether it lies upon the defendant to prove circumstances establishing its validity. *Andappa v. Tottappa*, 33 I. C. 441. Where the first relief in a suit relates to a declaration as to the general title of the plaintiff to all the properties she inherited and the second to set aside a particular deed of transfer in respect of a particular property inherited by her, it was held that the reliefs were not co-extensive but were separate and necessary reliefs and *ad valorem* court-fee must be paid in respect of both the reliefs as being for a declaratory decree with consequential relief. *Khiri Chand v. Musst Meghni*, 5 Pat. 496=1926 Pat. 453. A suit for a declaration that a registered deed does not affect the plaintiff's title is one clearly under s. 39 of the Specific Relief Act and such a suit is a suit for a declaratory decree with consequential relief.



and court-fee must be paid under the Court-Fees Act, s. 7 iv (c). The relief claimed is really the same whether the plaint purports to ask that a document should be adjudged voidable or declared not to affect the plaintiff's title or be set aside or cancelled. 38 M. 922 was followed and 30 C. 788 was dissented from. *Babu Rao v. Balaji Rao*, 1929 Nag. 74. In *Krishna Das v. Haricharan*, 15 C. W. N. 823, where the plaintiff filed a suit for declaration of his title and prayed that defendant may be restrained by an injunction from collecting the rent from the properties, it was held that the suit virtually amounted to a suit for possession to be valued under para (v) of the section. Their lordships observed thus "In a case of this description the value of the relief sought is manifestly the value of the property in dispute" and followed the decisions in *Ganapati v. Chatu*, 12 M. 223 and *Ibrayan v. Komamutti*, 15 M. 501.

**Suit by Minor.**—A minor has not got to set aside a transaction by a guardian in suing to recover property. He can ignore the transaction and merely pray for possession. Consequently as there is no suit for cancellation of the instrument, clause iv-A Madras (Amendment) does not apply. *Alagar Iyengar v. Srinivasa Iyengar*, 50 M. L. J. 406, was dissented from and their lordships observed as follows: "It has been held in a long series of cases beginning with *Unni v. Kunchi*, 14 M. 26 and *Putivelu v. Chandri*, 74 I. C. 1003 = 1924 Mad. 522, that a minor has not got to set aside the transaction by a guardian in suing to recover the property. He can ignore the transaction and merely pray for possession. That being so he does not seek cancellation of the instrument. In this respect, his position is different from that of an adult executing the document himself as pointed out in *Unni v. Kunchi Amma*, 14 M. 26." *Veeraraghuvala v. Sreeramulu*, 112 I. C. 1928 = 1928 Mad. 816. See also the unreported decision in *Ranganathan Chetti v. Narayanasami Chetti*, C. R. P. No. 954 of 1932 dated 14-2-1933. But see *Doraiswami Reddiyar v. Thangavelu Mudaliar*, 1929 Mad. 668.

**Valuation.**—Regarding a suit for a declaratory decree in which consequential relief is prayed for, the plaintiff is entitled to put his own valuation and according to the provisions of the Suits Valuation Act the jurisdiction of the court would be in accordance with the valuation put by the plaintiff. *Official Trustee of Bengal v. Govardhan*, 33 C. W. N. 231. In *Baramal v. Tulsi Ram*, 9 Lah. 366 = 107 I. C. 609 = 1927 Lah. 890, it was held that a suit for a declaration that a will was a forgery, and for injunction restraining the defendant from interfering with the plaintiff's possession, fell within the ambit of iv (c) and the plaintiff was entitled to fix any arbitrary value on the reliefs and the court need not see if the value fixed by him is according to the value of the property. See also *Jhanda Singh v. Gulab Mal Bhagwan Dass*, 137 I. C. 240 = 33 P. L. R. 488 and *Ghulam Haider v. Bishambar Das*, 140 I. C. 73 = 33 P. L. R. 458. As a general rule the amount at which the plaintiff values the relief sought by him for purposes of court-fee

is to be taken despite anything to the contrary in the plaint as the value for purposes of jurisdiction. *Ghulam Haider v. Bishambar Das*, 140 I. C. 73=33 P. L. R. 458. See also *Annapurnayya v. Nagaratnamina*, 1926 Mad. 591. The plaintiff must put down one single and entire sum as representing the value of the total reliefs sought by him. He cannot put one value for purposes of court-fee and another for purposes of jurisdiction. *Basanta Kumari Debya v. Nalini Nath Bhattacharjee*, 57 C. L. J. 465; In the matter of *Kalpada Mukharjee*, 58 Cal. 281=1930 Cal. 686=34 C. W. N. 870. There is no direct authority for the court to interfere with the valuation set up by the plaintiff. But if the plaintiff makes an absurd and outrageous misrepresentation as to the value of his suit under paragraph iv (c) or (d), in order to have it tried by some particular court, the court can interfere with the valuation by invoking its powers under section 151 Civil Procedure Code. *Rajendra v. Bahu Rani*, 107 I. C. 330=1928 Oudh 260. See also *Bara Mall v. Tulsi Ram*, 107 I. C. 609; *Sunderabai v. Collector of Belgaum*, 43 B. 376=52 I. C. 897; *Tula Ram v. Dwarka Das*, 50 A. 610=1928 All. 248; *Maung Noe v. Maung Kha Pu*, 142 I. C. 705=1933 Rang. 40. In a suit for declaration with consequential relief, plaintiff is entitled to place any value on the suit and the value for purposes of court fee and jurisdiction is the value of the relief; but the defendant is entitled to take objection to the valuation given in the plaint, both as affecting the question of jurisdiction and as affecting the question of court-fee. When such objection is taken, the Court is obliged to enter into the question of whether the value is correct. *Krityanand Singh v. Dinu Manjhi*, 149 I. C. 109=1934 Pat. 234. See also *Mt. Zahur Bibi v. Sherifuddin Khan*, 1935 Pat. 68. On this point see the Full Bench decision of the Calcutta High Court in 61 Cal. 796 cited fully under Clause iv—general. It cannot be laid down as a universal rule that in all cases where the plaintiff sues for a declaration that he is the owner of the property in dispute and that it is not liable to be attached in execution of the decree of the opposite party and for an injunction, he will have to pay an *ad valorem* Court-fee on the value of the property. *Mt. Zahur Bibi v. Sherifuddin Khan*, 1935 Pat. 68.

In a suit for cancellation of a mortgage bond for several thousands of rupees the plaintiff put the valuation as Rs. 50; it was held that the High Court had no powers to revise the valuation and that its power to do so is limited to cases provided for by s. 9. which relates to profits arising from lands, houses, etc. *Chinnamal v. Madarsa Rowther*, 27 M. 480=14 M. L. J. 343. But this decision is no longer correct after the enactment of paragraph iv-A in Madras. As to how plaints for declaration with consequential reliefs should be valued, see *Ayimuddin v. Kadira Rowther*, 43 I. C. 995; *Chelasami v. Chelasami*, 24 M. L. J. 233 and as regards suits for bare declaration, see the observation of Wallace, J., in *Veeramma v. Butchiah*, 50 M 646=1927 Mad. 563.

Where the plaintiff alleging that he is the next heir to an inalienable estate and that the present owner thereof was intending to alienate same for a sum of Rs. 40,000, prayed for a declaratory decree and prayed also that the contemplated sale be prevented, it was held that the court-fee payable for such a claim was the *ad valorem* fee on the alleged sale consideration. *Pratap Singh v. Nanhe Lal*, 110 I. C. 163 = 1928 Nag. 243,

**Proviso for Madras.**—In cases falling under clause (c) *i.e.* suits to obtain a declaratory decree or order where consequential relief is prayed for, where the relief sought is with reference to any immoveable property, such valuation shall not be less than half the value of the immoveable property calculated in the manner provided in para v. [cf. analogous provisions Arts. 2 and 4 Sch. I.] The words '*with reference to*' have been construed to mean '*involving the possession of*' and it was held that this proviso is not consequently applicable to suits for easement rights, etc. *In re Venkatakrishna Pattar*, 1927 Mad. 348. By means of this proviso the privilege given to the plaintiff, to value such suits as he chose, is curtailed by a minimum value being fixed therefor. But it is noticeable that the words 'memorandum of appeal' found in the main section are absent in the proviso. It is presumed that the omission is not intentional and the appellant is equally bound by the provisions of this proviso and could not value his appeal at any thing below the minimum therein prescribed.

**Temples.**—In the case of places of worship the subject-matter is not capable of valuation. *Rajagopala v. Ramasubramani*, 46 Mad. 782 = 1924 Mad. 19 (F. B.); *Pursothamanand Giri v. Mayanand Giri*, 1932 All. 593.

**Decrees and suits to set them aside.**—Where the plaintiff sued for a declaration that a decree was obtained against him by fraud and consequently unenforceable, it was held that the suit is a declaratory suit in which consequential relief is prayed for and the court-fee is payable under clause (c). The decision in 38 M. 922 F. B. was followed. *Hakim Rai v. Ishar Das*, 8 Lah. 531 = 1927 Lah. 499 = 102 I. C. 46; *Ram Nath v. Jaggan Nath*, 1934 Pesh. 109. In a suit by the Hindu sons for a declaration that a decree obtained by the defendant against their father is not binding on them and the joint family property, court-fee is payable not as on a mere declaration but *ad valorem* because the obvious effect of the decree would be to save the property from liability to the decretal amount. *Lalloo Prasad v. Shahebdin Singh*, 8 Luck. 668 = 1934 Oudh 212. But the Allahabad High Court has held in *Ishwar Dayal v. Amba Prasad*, 1935 A. L. J. 498 = 1935 All. 667, that a suit for declaration that a certain mortgage bond executed by the plaintiff's father is unenforceable and that the family property mortgaged by that deed is not saleable in execution of an *ex parte* decree for sale obtained on that mortgage falls within Sch. II, Art 17 (iii) and not within

s. 7 cl. iv (c). Where the suit was for a declaration that the decree obtained by the defendant decree-holder against the plaintiff was not binding and that the plaintiff was not properly represented in the suit and that the decree is a fraudulent one and the plaintiff prayed for possession of the properties also, and valued the suit at Rs. 9,000 the value of the property while the decree debt was for Rs. 22,000 it was held by the Calcutta High Court in *Ganesh v. Sarada*, 19 C. W. N. 895, following the Privy Council decision of *Phul Kumari v. Ghavi Shyam*, 35 C. 202, that the value of the action must mean the value to the plaintiff and that the suit was properly valued. See also *Venkata Narasimharaju v. Chandrayya*, 53 M. L. J. 267 = 105 I. C. 171 = 1927 Mad. 825. Where a decree was obtained by 1st defendant against 2nd defendant and the plaintiff claimed that it was collusive and fraudulent and obtained with a view to defeat his claim under his decree by rateable distribution, it was held that the prayer for declaration included virtually a prayer to set aside the decree and *ad valorem* court-fee must be paid on the amount of the decree sought to be set aside. *Pandarínath Krishna v. Maroti Ganesh*, 1933 Nag. 214. It is submitted that the decision may well be reconsidered. Where the plaintiff sued for a declaration that a decree obtained against him by the 1st defendant was not valid and binding on him and for recovery of possession of the properties covered by the decree, it was held that the main relief was recovery of possession and that it could therefore be said to fall within s. 7 cl. (v). *Venkatasiva Rao v. Venkatanarasimha Satyanarayanamurthy*, 139 I. C. 317 = 63 M. L. J. 764 = 1932 Mad. 605. Where the plaintiff prays for a simple declaration that the previous decree is not in any way binding upon him and is altogether void and ineffectual, his suit is one for obtaining a declaratory decree only and falls under Art. 17 (3). *Sri Krishnachandra v. Mahabir Prasad*, 1933 A. L. J. 673 = 1933 All. 488 (F. B.). Where in a suit for partition a consent decree is passed, but subsequently a suit is filed for setting aside the decree, a prayer for partition or for possession would be unnecessary and court-fee of Rs. 15 for setting aside the decree alone need be paid. *Ratanchand Rewachand v. Anandbai*, 1933 Sind 53. Where a person sues for a declaration that an *ex parte* mortgage decree is null and void as against the plaintiff and for an injunction to stay the further progress of the case and the execution of the mortgage decree until the decision of the suit, the suit is plainly a suit for a declaration plus a consequential relief by injunction, as the question of court-fees must be decided in accordance with the prayer which is made in the plaint. If in such a suit, the value for the purpose of jurisdiction has been fixed at a certain amount, the valuation for the purpose of court-fees must be fixed at the same amount. *Dam Min Thwe v. C. R. M. C. Chettyar Firm*, 150 I. C. 1030 = 1934 Rang. 152.

Where the plaintiff's object in bringing a declaratory suit is to get rid of a decree passed against him in a previous suit, whether the

suit is one involving a prayer for an injunction restraining the decree-holder from executing the decree, or is one involving a prayer for setting aside that decree, the plaintiff must bear an *ad valorem* court-fee. "The point is concluded by the judgment in *Hakim Rai v. Ishar Das*, 8 Lah. 531=1927 Lah. 499 and *Arunachalam Chetty v. Rangaswamy Pillai*, 38 M. 922=28 M. L. J. 118" per Shadi Lal, C. J., in *Bindraban v. Punjab National Bank*, 1929 Lah. 463. A suit for declaration that a decree is not executable against the plaintiff as he was not a party to the suit, is one in which consequential relief is prayed for because the object of the plaintiff is to get rid of a decree and an *ad valorem* Court-fee must be paid under s. 7 cl. IV (c). *Narain Das v. Har Sukh Das Chhog Mal*, 152 I. C. 847 (Lah.) See also *Jhanda Singh v. Gulab Mal Bhagwan Dass*, 137 I. C. 240=33 P. L. R. 488, where an injunction restraining defendant from executing the decree was asked for. In such a case the Court is bound to accept the valuation placed by the plaintiff upon the relief sought by him even though such valuation is arbitrary and inadequately represents the value of the property. *Jhanda Singh v. Gulab Mal Bhagwan Dass*, 137 I. C. 240=33 P. L. R. 488.

**Valuation in appeal.**—Where the plaintiff sued for setting aside a deed of endowment and recover a sum of over two lakhs of rupees so dedicated, an *ad valorem* fee was paid. The defendant appealed against the decree and sought to pay a fixed fee of Rs. 10. It was held that though the defendant might not have any personal interest in the matter, still the subject-matter of the appeal may be as valuable as that in the suit and *ad valorem* fee was directed to be collected. *Mahomed v. Malkai*, 10 C. 380. See under cl. (f) *infra* as to whether an appeal can be valued differently from the suit.

Where in an appeal, the appellant seeks exoneration of any property from liability under a mortgage decree or seeks to make the excluded property also liable under the decree, the relief sought is not merely declaratory, but that a consequential relief of exemption of specified property from or its inclusion within the scope of the decree is definitely claimed and hence a fixed court-fee for declaration alone is not sufficient. It is the value of the debt or the value of the property whichever may be less that determines the value of the relief in appeal for the purposes of court-fee. *Punjiji v. Ramchand*, 111 I. C. 650=1928 Nag 316. See also under Sch. I, Art. 1 on the point.

## Paragraph IV-A.

**1. Object of the Provision.**—This paragraph has been added by the Madras Court-Fees Amendment Act. Though this paragraph comes only after para (iv), it really covers a special class of cases falling under iv (c), *viz.*, cancellation of documents and decrees and hence this paragraph is dealt with here. In the statement of objects and reasons (*vide* Fort Saint George Gazette dated the 7th February 1922, Part IV, page 20) it is stated that the revision of the Act was thought expedient

to provide for additional revenue and that no attempt was made "to revise the Act so as to reconcile conflicting decisions or to settle controversial questions". Consequently no special principle underlies the enactment, except that its sole aim was to enhance the fees payable, in a certain classes of suits with a view to more income. This is in short an extension of the underlying principle in the Madras proviso to para iv (c) whereby the discretion given to plaintiff to value his suit as he chose was restricted and a minimum valuation was fixed in the class of suits specified in the proviso.

**2. Scope.**—The paragraph consists of two parts, the first part setting out the nature of the suits contemplated by the paragraph and the second part laying down definite rules for the computation of the value of such suits. The class of suits referred to are (1) those for the cancellation of a decree for (a) money or (b) other property having a money value and (2) other document securing (a) money or (b) other property having money value. These suits have to be valued according to the value of the subject-matter of the suit. Section 7 paragraph iv-A is not exhaustive. It applies only to specified classes of cases. Where the decree that is sought to be set aside is itself a declaratory decree or is not one for money or for other property having money value or the document sought to be cancelled is about property which has no money value, this paragraph could not apply. In such cases it is either Schedule II Article 17-A or s. 7 iv (c) that applies.

**3. Application.**—It need hardly be observed that but for the enactment of this paragraph, the general provision applicable to all suits for cancellation of decrees and documents is paragraph iv (c). As a matter of fact, clause (c) is applied to such suits in other Provinces and was also applied by the Madras High Court also prior to 1922 when paragraph iv-A was embodied in the Act. In the case of suits falling under iv-A, that paragraph alone has to be applied. *Alagar Ayyangar v. Srinivasa Ayyangar*, 50 M. L. J. 406; *Venkatanarasimha Raju v. Chandrayya*, 53 M. L. J. 267. *In re Lahshmi Ammal*, 49 M. L. J. 608, is a suit by a vendee for a cancellation of a deed of purchase of land for Rs. 2,000, wherein Rs. 1,000 was paid and a mortgage deed was executed for the balance of sale consideration. The suit was for (1) the cancellation of the sale deed, (2) the cancellation of the mortgage deed and (3) the recovery of Rs. 1,000 cash paid as sale consideration. It was held that para. iv-A applied and the suit should be valued at Rs. 2,000 the value of the property. Where the plaintiff sued for a declaration that a decree obtained against him by the 1st defendant was not valid and binding on him and for recovery of possession of the properties covered by decree, alleging that he was a minor when the prior suit was brought by the 1st defendant and that he was not properly represented in that suit, it was held that the suit was for cancellation of the decree and was governed by s. 7 cl. iv-A and not by s. 7 cl. (iv) (c). *Venkatasiva Rao v. Venkatanarasimha Satyanarayanamurthy*, 139 I. C. 317=63 M. L. J. 764=1932 Mad. 605. The observation

of Ramesam, J., in *Balakrishnan Nair v. Vishnu Nambudiri*, 132 I. C. 129=1931 Mad. 375, that in the case of decrees, the proper prayer is not to set the decrees aside, but for a declaration that the decrees are not binding on the plaintiffs; is explained away in the judgment of Reilly, J., in the above case, who holds that though it is more appropriate in such cases to word the prayer as one for declaration that the previous decree is not binding on the plaintiff, the nature of the suit is still the same, viz., to set aside the previous decree. *Ibid.* Where a person sues for a declaration that a previous decree obtained against him on the basis of a mortgage executed by his father is not binding on his share of the property, the suit is in substance one for cancellation of the previous decree and court-fee is payable under s. 7 cl. iv-A and not under s. 7 cl. (iv) (c). *Secretary of State v. Lakhanna*, 64 M. L. J. 24=141 I. C. 80=1933 Mad. 430. Where a transferee from a mortgagor sued for a declaration that a consent decree passed between the mortgagor and the mortgagee fixing the amount payable for the redemption of the mortgage at Rs. 4,000 was in contravention of an agreement between himself, the mortgagor and the mortgagee by which the amount was fixed at Rs. 1,850, and was not binding on him and prayed that the property should be delivered to him on payment of Rs. 1,850, it was held that the object of the suit was to get rid of the consent decree and that s. 7 cl. iv A was directly applicable to the case and that court-fee was payable on Rs. 2,150 being the difference between Rs. 4,000 and Rs. 1,850. The suit could not be regarded as one for redemption under s. 7 (ix) and the fact that the suit was filed by the transferee from the mortgagor could make no difference, 69 M. L. J. 45. A suit for a declaration that a sale deed by the plaintiff's guardian during plaintiff's minority is not binding on him must be deemed to be in substance a claim to have the document cancelled. (See *Doraisami v. Thangavelu*, 1929 Mad. 668) and court-fee is payable under s. 7 cl. iv-A. *Secretary of State for India in Council v. Bonam Swami Naidu*, C. R. P. No. 574 of 1932 (unreported) decided by the Madras High Court on 18-11-1932. The paragraph applies only where a decree or document sought to be cancelled is for money or for other property having a money value. Where for instance the decree sought to be cancelled is a declaratory decree or one for restitution of conjugal rights or the document sought to be set aside relates to something that has no money value then the paragraph could not obviously apply. For an instance of such a suit see *Rani Kulandai v. Indran Ramaswami*, 55 M. L. J. 345 cited *infra*. This paragraph is of course not applicable when the prayer for the cancellation of the document is not necessary. In that case, the relief prayed for will be treated as a surplusage. There is a distinction between the getting rid of a document to which a person is a party and one to which he is not. Where the plaintiff's allegation is that the sale deed in question was forged and that in spite of his objection, the Registrar directed its registration, his suit for declaration that the instrument may

be declared to be a forgery cannot come under cl. (iv-A) as the plaintiff cannot be said to be a party to it and need not get it cancelled or set aside. *Nagabhushanam v. Venkatappayya*, 68 M. L. J. 95 = 41 L. W. 90 = 1933 Mad. 203.

A previous suit for possession of properties with past and future mesne profits and in the alternative for maintenance and past maintenance was compromised and a decree was passed in terms of the compromise. By this compromise, the plaintiffs withdrew their claim in respect of the immoveable properties and got a decree for maintenance. It was recited in the compromise that the claim for arrears of maintenance had been satisfied. The plaintiffs then brought a suit to set aside the compromise and the decree passed in the previous suit. It was held that the effect of setting aside the compromise decree would be that the suit, which had been withdrawn and in respect of which full court-fee on the value of the property had been paid, would have to be proceeded with, and the setting aside of that decree would not by itself give any property to the plaintiffs but would only give them the right to prosecute a suit which, according to them, had been terminated in a manner which is not binding on them, and that, therefore, the proper court-fee payable was that payable under Article 17-A of Schedule II of the Court-Fees Act as amended by Madras Act V of 1922 and not under s. 7 paragraph iv-A. Their Lordships further observed "It is difficult to see how the compromise decree which is sought to be set aside secures to the plaintiffs anything except the maintenance awarded. It does not secure them any immoveable property. The effect of setting aside the compromise decree will be that the suit which has been withdrawn and in respect of which full court-fee on the value of the property has been paid would have to be proceeded with and it is clear that the setting aside of the compromise decree would not by itself give any property to the plaintiffs but would only give them the right to prosecute a suit which according to them has been terminated in a manner which is not binding on them owing to fraud and other circumstances set out in the present plaint. \* \* \* We think the proper court-fee is that payable under schedule II article 17-A of the Court-Fees Act, as amended by Madras Act V of 1922. *Rani Kalandai Pandichi v. Indran Ramaswami Pandia Thalavan*, 55 M. L. J. 345.

### **Suit for cancellation and recovery of possession.—**

Where a prayer for declaration and cancellation is coupled with any other relief as for possession, what is the court-fee payable? It was held in *Arunachellam v. Rangaswami*, 38 M. 922, that where the suit for declaration fell within any other class of suits specified in s. 7, it must be treated as a suit of that description and dealt with accordingly. In *Rajagopala v. Vijayaragavalu*, 38 M. 1184, which was also a case of declaration and possession it was held as the possession was asked for not on any other ground but as consequent on the grant of the declaration the relief for possession alone has to be valued. But this



was a suit where there need be no cancellation at all being a suit by a person not a party to the document. But when a person is a party so far as Madras is concerned, paragraph iv-A, the provision specially relating to the cancellation of documents, should alone apply. When a person sues for cancellation of a document and for possession, the fee under both paragraphs iv-A and v could not be levied. The fee will have to be computed under one of the two paragraphs and it is clear it should be only under iv-A. In a later decision of the Madras High Court, *Thangachi Ammal v. Mohamed Moideen Maraicair*, 56 Mad. 401=64 M. L. J. 127=1933 Mad. 231, the same view has been taken and it has been held that in a suit for the cancellation of a sale deed executed by the plaintiff and for recovery of possession of the land, covered by the deed, the claim for recovery of possession was merely ancillary to the main claim, namely setting aside the sale deed and that separate court-fee was not payable in respect of the prayer for possession. It has been held that if there is a special provision which applies to a particular case, then that special provision must be applied by the Court rather than some general classification in which the suit may also be included. *Venkatasiva Rao v. Venkatanarasimha Satyanarayanamurthy*, 139 I. C. 317=63 M. L. J. 764=1932 Mad. 605. Such a suit would therefore fall under cl. iv-A and not cl. v but the question is now immaterial for purposes of court-fee as the value of the property calculated under cl. v has to be taken as the value of the subject-matter of the suit under cl. iv-A also according to the decision in 53 M. L. J. 267 cited and commented on under the heading 'Valuation' below. In *Alagar Ayyangar v. Srinivasa Ayyangar*, 50 M. L. J. 406, where the suit was for a declaration that certain alienations were not binding on the plaintiff, and recovery of possession of the plaintiff's share of the property and was valued under cl. v, the court held that the valuation should be under cl. iv-A according to the amount of the consideration in the sale deed. But this view as observed above has not been followed in the later case reported in 53 M. L. J. 267.

**4. Valuation.**—Paragraph IV-A lays down that the suit is to be valued according to the 'value' of the subject-matter. The value of the subject-matter in a suit to set aside a decree for money is the amount of the decree. A mortgage decree is a decree for money and not one for other property having money value and a suit to set aside a mortgage decree must be valued on the basis of the amount of the decree. *Allamneni Venkataramayya v. Kencharla Gopalan*, C. R. P. No. 848 of 1933 (unreported) decided by the Madras High Court on 9-5-1934. As regards a suit to set aside a decree or a document in respect of land, what is the value? Is it the market-value or the statutory value as computed under paragraph (v) in the case of possession. The decisions in Madras to which Presidency alone this paragraph applies are by no means uniform. *Alagar Ayyangar v. Srinivasa Ayyangar*, 50 M. L. J. 406, is the decision of a single judge. There the suit was for setting aside an alienation by the guardian (the

necessity for which was of course questioned in the later decision in *Veeraragavahu v. Sreeramulu*, 1928 Mad. 816) and for possession. The suit was valued as for possession. It was held that paragraph iv-A applied and that the suit should be valued according to the amount of sale consideration in the sale deed. That is practically the market value and certainly not the statutory value as contemplated by paragraph (v). Contrasted with this is the decision of a division bench of the Madras High Court to which Odgers, J., who decided the 50 M. L. J. case quoted above was also a party. In that decision *Venkata-narasmiha v. Chandrayya*, 53 M.L.J. 267, it was held that "Where a decree affecting immoveable property is sought to be set aside, the subject-matter of that decree is the value of the immoveable property in that suit. In such a case the statutory value should be adopted and not the market-value of the property. When there is in the Court-Fees Act itself a special rule as to valuing the property in suits for court-fees, it is proper to take that method of valuation in preference to any other method to get the value where there is no indication that any other method should be adopted".

Now which is the correct view? It is submitted that it is the market-value that is contemplated in paragraph iv-A and that the decision in 53 M. L. J. 267 may well be reconsidered. Their Lordships including Odgers, J., who held the contrary view in 50 M. L. J. case, which was not referred to at all in the later 53 M. L. J. case, base their decision on the broad statement that where there is in the Act itself a special rule as to valuing the property it is proper to take that method of valuation. What is the special method indicated in this paragraph? It is simply stated "value." In the Act itself there are several methods for computing the value of property. It is the market-value in some places, *vide* s. 7 (iii), v (d), v (e), s. 9, Schedule I, Art. 11, etc. It is a statutory value in other cases as *e. g.* s. 7 v (a), and (b), and it is an arbitrary value in a still third class of cases as in s. 7 (i) and (ii). Why should one kind of valuation be chosen as having been indicated in para. iv-A? Where for instance it is the intention of the Legislature that the value should be calculated in accordance with paragraph (v) they explicitly state it. *Vide* proviso to s. 7 (iv) (c) Madras amendment and para (vi). That proviso and paragraph iv-A were both enacted by the local legislature at Madras at the same time and the mention of the methods of computation "*as under paragraph v*" in the proviso and the absence of any each mention of paragraph (v) in para iv-A, shows that valuation as per paragraph (v) was not contemplated in determining the value under para iv-A. Generally the word 'value' must be taken to mean only market-value. There is no definition of the term in the Act and wherever it is used it appears to apply to the market-value except in those cases in which an arbitrary calculation is authorised or directed by the Act. See the decision in 1 B. 118, where it was held that "value" mentioned in Sch. I Art. 11 was market value. Section 8 of the Suits Valuation Act lays down that the valuation for court-fees

and jurisdiction has to be the same. Though it is the value of the Court-Fees Act that has to be taken as determining the value for jurisdiction in such cases, still considering the fact that the two have to be identical, any decision on the question as how the suit is to be valued for jurisdiction may have also some bearing on the question how the court-fee has to be determined. In *Veeranna v. Butchayya*, 50 M. 646, Wallace, J., observes at page 652 of the Report as follows: "Where the subject-matter of the suit is so related to things which have a real money value that the relief asked for will affect these, then the value of the suit for the purpose of jurisdiction is to be taken as the market-value of the property affected." Further the valuation in paragraph (v) is only intended to be applied where the relief prayed for is possession of such property. The relief contemplated by paragraph iv-A is the cancellation of the instrument and it cannot be contended that the valuation of the property dealt with in the document sought to be cancelled should of necessity be calculated as under paragraph (v) as their Lordships held in *Venkatanarasimha v. Chandrayya*, 53 M. L. J. 267. It may be noted in this connection that the decision in 53 M. L. J. 257 has been recently referred to with approval in the judgment of Anantakrishna Ayyar, J., in *Venkatasiva Rao v. Venkatanarasimha Satyanarayanaumurty*, 56 Mad. 212=63 M. L. J. 764=1932 Mad. 605. The point however was not specifically dealt with and decided in this case as there was no necessity for that. There the suit was for declaration that a previous decree was not valid and binding on the plaintiff and for recovery of possession of the properties covered by the decree and the Lower Court had held court-fee was payable as for a suit for possession under clause v of s. 7. The plaintiff came up to the High Court in revision against that order and claimed that the suit was chargeable to court-fee only under s. 7 cl. iv (c) and not under clause v. The High Court held that the suit fell both within s. 7 (v) and s. 7 iv-A, that the court-fee payable under either of the clauses was the same and that the order of the Lower Court was correct. It may be noticed, however that it was apparently assumed before their lordships that the value meant the statutory and not the market value and the reasons on which the decision in the 53 M. L. J. were based were not examined, the only point for consideration by court being whether the Clause iv (c) or v of s. 7 applied.\*

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\* The view above taken has since been approved by Justice Venkatasubba Rao in a recent decision *Jonnaveeram Bali Reddi v. Khattpal Sab*, 1935 M. W. N. 981. His Lordship observes:—"Now as regards the sale deeds, the question arises, is the value referred to in the section, the actual value of the property, that is to say, its market value or the artificial value prescribed by s. 7 (v)? The last mentioned section deals with suits for possession and the legislature has expressly enacted that in such suits the value shall be determined in a particular manner. Cl. iv-A refers simply to "the value of the property," which means 'value' as generally understood, whereas cl. (v) prescribes an artificial method of valuation. There is no reason to construe cl. (iv-A) in the light of cl. (v) which deals with a specific matter; indeed, when the legislature intends to prescribe an artificial method, it says so in express terms, as cl. (iv) (c) also shows. I am therefore of the opinion that in

**Valuation where relief is claimed as regards plaintiff's shares**—In a suit to set aside a partition deed so far as the plaintiff's share of the property is concerned, court-fee has to be paid only on that share and not on the value of the whole property. *Govindan Nair v. Madhavi*, 138 I. C. 303=62 M. L. J. 712=1932 Mad. 491. See also *Karaga Gowda v. Sivappa Gowda*, 140 I. C. 585=36 L. W. 793.

**Summary.**—The effect of the decisions of the several High Courts and the enactment in Madras of paragraph IV-A may be summarised as follows :

1. A person who is neither a party to a document nor his representative need not have a document set aside or cancelled.

2. A superfluous or redundant prayer for cancellation of a document will not affect the real nature of a suit and will be ignored by courts. *Kattiya Pillai v. Ramaswami Pillai*, 1929 Mad. 396=56 M. L. J. 394.

3. Where a document has to be set aside or cancelled, a bare declaration is sufficient according to the view of the High Courts of Bombay and Rangoon but there must be a prayer for the consequential relief of cancellation according to the views of the High Courts of Madras, Lahore, and Patna.

4. Even in Madras, where the suit for cancellation is by a person who is not party to the instrument, a suit for a bare declaration would suffice. *Kattiya Pillai v. Ramaswami Pillai*, 1929 Mad. 396=56 M. L. J. 394.

5. In cases where the prayer for consequential relief is considered necessary if the relief sought is only for a mere declaration about the invalidity of the document and that the plaintiff's title to any property is not affected by it, the suit is construed to be a suit for declaration with consequential relief, "the application of any particular clause depending on the substance of the claim and not on the mere words used in the plaint." *Alagar Ayyangar v. Srinivasa Ayyangar*, 50 M. L. J. 406; *Achammal v. Achammal*, 20 M. L. J. 791.

6. The general provision of the Act for the cancellation of documents or decrees is either Article 17 (3) of Schedule II. for simple declaration or s. 7 iv (c) for declaration with consequential relief, though according to the recent decisions of the Allahabad High Court suits for cancellation of documents would fall within Sch. I., Art. 1.

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the case of the sale deeds, the amount of court-fee payable must be computed on the market value of properties with which they deal." The decisions in 53 M. L. J. 267 and 56 Mad. 212 were referred to. His Lordship further observed, "With great respect, there is a fallacy, as I have shown, underlying this reasoning. Sitting as a single Judge, I should consider myself bound by these decisions, but the present case, as I have said, deals with mortgages and sales, whereas the two cases referred to above deal with decrees."

7. As regards such suits in Madras they are governed by s. 7 paragraph IV-A.

8. Where a person who has to set aside a document being a party thereto, sues for cancellation of same and adds a prayer for recovery of possession of the property, the fee has to be levied in Madras under paragraph iv-A and the fee will be the same as will be payable under s. 7 cl. v. In some other Provinces the suit is one for declaration with consequential relief under paragraph iv (c) where a party files the suit, or one under (v) where a person who is not a party seeks to get possession after availing a document. It may be remembered that in those provinces the value under cl. iv (c) should be taken as the market value and not at the statutory value under cl. (v). But there is no specific provision in the Court-Fees Act for cancellation of documents, which accounts for the application of Sch. I, Art 1 to such reliefs by the Allahabad High Court.

### PARAGRAPH IV (d) INJUNCTION.

**Scope.**—This clause governs cases where the relief of injunction is prayed for either by itself or where it is coupled with other reliefs, it is claimed and construed as an independent relief.

**Different kinds of injunction.**—Injunctions are of two kinds, temporary and perpetual. Temporary injunctions are regulated by O. 39 rr. 1 and 2 C. P. C. and perpetual injunctions by ss. 55 to 57 of the Specific Relief Act I of 1877. A temporary or interim or ad interim injunction as it is called may be granted on an interlocutory application at any stage of a suit. The relief is temporary. Such injunctions “are to continue until a specified time or until the further order of the court. They may be granted at any period of a suit and are regulated by the Code of Civil Procedure.” Section 53, Specific Relief Act. “A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit: the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.” *Ibid.*

**Mandatory injunction.**—There is yet another kind of relief called Mandatory Injunction. Section 55 of the Specific Relief Act enacts that where “it is necessary to compel the performance of certain acts which the Court is capable of enforcing, it may grant an injunction \* \* \* to compel the performance of the requisite acts.” Though s. 55 of the Specific Relief Act is one of the sections embodied in Chapter X of the Act, entitled “Of Perpetual Injunctions” still there could be relief by way of temporary mandatory injunction. The Courts in England have the power to grant mandatory injunctions on interlocutory applications. *Bonner v. Great Western Railway Co.*, (1883) 25 Ch. Dn. 1. Chartered High Courts have similar jurisdictions in the exercise of their Ordinary Original Civil Jurisdiction. *Champsy v. Jamna Flour Mills*, 28 I. C. 121. The Subordinate Civil Courts in

the Mofussil have also the same powers. *Rasul Karim v. Pirubhai*, 38 B. 381=24 I. C. 625; *Israil v. Shamser*, 41 Cal. 436=21 I. C. 861; *Kandaswami v. Subramania*, 41 Mad. 208=41 I. C. 384.

**Interim Injunction.**—In all cases where a temporary relief is granted to enure for a specified period or until further orders of Court or till the disposal of the suit, they are all ordered on interlocutory applications in the suit or appeal. They are rarely prayed for in the plaint itself. But where it is prayed for specifically or forms an item in the subject-matter of appeal, it is construed to be consequential relief. In *Gangadhar Misra v. Rami Devendrabala Dasi*, 5 Pat. 211=94 I. C. 22=1926 Pat. 249, the suit was one for declaration *but pending the suit* an injunction was obtained. On the dismissal of the suit an appeal was preferred *the injunction subsisting at the time of the appeal*. It was held that for the purposes of Court-fees, the appeal fell within s. 7 iv (c) and *ad valorem* Court-fee was payable on the consequential relief.

**Injunction coupled with other reliefs.**—Generally the relief for injunction is coupled with other reliefs like declaration, possession, etc. Such cases fall under two heads.

(i) **Where the relief of injunction is not an independent one** but naturally flows from the other main relief sought, it is ancillary to or merged in same. For example where the main relief sought is declaration the case is covered by paragraph iv (c) of the section which relates to suits to obtain a declaratory decree or order, where consequential relief is prayed for.

(ii) **Where the injunction is the main relief** and the other relief that is prayed for only paves the way for the grant of the main relief or flows from the relief of injunction then the case is converse of (i) and the other relief is the subsidiary one and is merged in the relief for injunction. Then clause iv (d) applies.

For a fuller discussion of this and reported cases under (i) above see commentaries under clause iv (c) "Declaratory decrees and consequential reliefs."

**When clause (d) applies.**—Clause (d) therefore applies only to cases where the relief of injunction is a distinct and independent entity by itself and is prayed for as a separate relief. In that case it must be separately valued, the valuation being entirely at the discretion of the plaintiff or appellant.

## Valuation.

### A—Court-Fees.

1. The plaintiff is at liberty to value it as he desires. *Guru vaiamna v. Venkutarishnama*, 24 Mad. 34; see also *Maung Ngai Maung v. Mandalay Municipal Committee*, 12 Rang. 335=1934 Rang. 268; But see *Mohendra v. Dinabhandu*, 21 I. C. 771 and *Janki Sahary v. Lalbehari*, 94 I. C. 103=1926 Pat. 334, where while holding that it was open to the plaintiff in a suit for injunction to value it as he pleases, it was observed that where the lower Court found that the

*valuation was unreasonable* the High Court would not interfere with it. The conditional acceptance of the plaintiff's valuation is in accordance with the view that the plaintiff should not put an arbitrary valuation. See also *Shrimat Sundaribai v. Collector of Belgaum*, 43 B. 276 and *Veeramma v. Butchayya*, 50 M. 646, particularly the observations of Wallace, J., at p. 551. For a fuller discussion on this topic see commentaries on paragraph (iv) under the heading "Valuation."

2. The value of the relief is not necessarily the value of the property in respect of which the relief is sought. *Rajabala v. Radhika*, 1924 Cal. 969.

3. A suit under s. 149 (3) of the Bengal Tenancy Act is not a suit on title. It is in the nature of a suit for an injunction or else a declaratory suit. *Jagadamba v. Prataf Ghose*, 14 C. 537.

4. Mandatory Injunction. Relief for same should be valued separately and *ad valorem* Court-fee paid thereon. *Jogal Kishore v. Tali Singh*, 4 All. 329.

5. Where the suit was one for a declaration that the suit property is trust property and that plaintiff is a trustee with the additional prayer that the defendant be restrained by an injunction from interfering with plaintiff's possession, the prayer for injunction was required to be separately stamped. *Thakuri v. Brahma Narain*, 19 All. 60.

6. Where the plaintiff sued to restrain the defendants from putting up a fence on the plea that the property was his, it was held that the question of title was not incidental and that therefore the Madras Proviso to para. iv (c) did not apply. *In re Venkata Krishna Pattar*, 1927 Mad. 348.

7. Where the plaintiff seeks an injunction restraining the defendants from enforcing a money decree passed against him personally in favour of the defendants, there is no difficulty in ascertaining the benefit which he expects to derive from the injunction sought and he cannot put an arbitrary value upon it but must value it according to the amount of the decree which he seeks to get vacated. *Nadir Khan Abdulla v. Firm of the Cox and Kink's Shipping Agency Ltd.*, 1931 Sind. 15. See also Para. IV-A of the Madras amendment.

### B—Jurisdiction.

Where the plaintiff gives two different valuations, one for the purpose of Court-fee and another for jurisdiction, then as according to s. 8 of the Suits Valuation Act, they should not be different, the question arises as to which of the two is to be taken as correct to govern the court-fees and jurisdiction. The following rules cover the whole range of such cases.

1. The valuation for court-fee must be the same as the valuation for jurisdiction. See s. 8, Suits Valuation Act. The plaintiff could not therefore put a lower value on his relief for injunction for the purposes of court-fees alone. *Bachhan v. The Municipal Board of*

*Mirzapore*, 48 All. 412=94 I. C. 951=1926 All. 423; *Govind v. Hammaya*, 59 I. C. 777; *Shrimat Sundaribai v. Collector of Belgaum*, 43 B. 376 (P. C.).

2. The valuation for purposes of court fees is to be determined first and that for purposes of jurisdiction must follow the same. *Manni Lal v. Gopalji*, 47 All. 501.

3. Where the plaintiff puts a valuation for jurisdiction higher than that for court-fees, the higher value for jurisdiction will be ignored. In *Govinda v. Hammaya*, 45 Bom. 567, the plaintiff in a suit for injunction valued his claim for Court-fee purposes at Rs. 10, and for purposes of jurisdiction at Rs. 500. The decision of the lower court that the latter value of Rs. 500 is to govern both was not upheld by the High Court which held that the plaintiff was entitled to value his claim at Rs. 10 for court-fee purposes and that it was wholly unnecessary for him to fix any value for the purpose of jurisdiction and that the Rs. 10 value governs both.

4. But a plaintiff cannot obtain the services of a higher tribunal for the determination of his claim by putting a higher valuation for jurisdiction and evade payment of court-fee by fixing a lower value therefor. *Manni Lal v. Gopalji*, 47 A. 501.

Thus it was held in *Kanhaiya v. Jagrani*, 46 A. 419, that though the plaintiff was at liberty to value the relief claimed by way of injunction at whatever figure he pleased, still if for the purpose of obtaining an adjudication from a court of superior grade, he elected to place a high value on the suit, he was bound to pay court-fees accordingly. See also *Jogeshra v. Durga Prasad*, 36 A. 500. The distinction between the decisions in 46 All. 419 and 45 Bom. 567 is that in the former case the adjudication by a superior tribunal was obtained and in the latter case no question of jurisdiction of the tribunal arose.

5. Where a suit is valued for purposes of jurisdiction, but no value is given for purposes of court-fee, then the value for jurisdiction is the value for Court-fee also. *Annapurnayya v. Nagaratnamma*, 1926 Mad. 591. Jackson, J., observes as follows "If the plaintiff had entered as his value for jurisdiction Rs. 10,000 and his value for *ad valorem* court-fee say Rs. 5,000, following the ruling in *Sailendranath Mitra v. Ramachandran*, 34 C. L. J. 94, the Court no doubt would take Rs. 5,000 as the value for the purpose of jurisdiction; but if the plaintiff enters as his value for jurisdiction Rs. 10,000 and owing to his misreading of the Court-Fees Act omits an *ad valorem* valuation altogether, considering the two valuations must be the same, the Court is justified in assuming that Rs. 10,000 would also be the *ad valorem* valuation for court-fees".

**Bombay Amendment.**—This clause has been amended in Bombay by Bombay Act II of 1932 by which the words "or other consequential relief" have been added: The effect of the amendment is, not quite clear. The use of the word "or" indicates that when consequential relief is prayed for as an additional relief the clause is,



not applicable. One cannot be sure whether that is the intention of the legislature. Again the use of the expression "*other* consequential relief" shows that the relief of "injunction" is also treated as a consequential relief under this clause. In the first place it is a contradiction in terms to call a relief a consequential relief in the absence of any main relief from the grant of which the former relief flows. There may be a suit for "declaration and injunction" or a suit for declaring a document to be invalid and for cancellation of documents, etc. In all such cases the injunction or cancellation is the consequential relief and declaration is the primary relief. Once the prayer ceases to be a primary relief and becomes a consequential relief, it forthwith comes within the purview of clause iv (c). Clause (d) as it stands applies to all cases where the relief for injunction is to be valued independently irrespective of the question whether it is a consequential relief or otherwise. The Bombay amendment by the addition of the words "*or other* consequential relief" restricts the clause "to obtain an injunction" to cases where the relief of injunction is deemed a consequential relief making the clause (d) inapplicable to cases where injunction is sought as a primary, independent or the sole relief, which it is obvious could not have been the intention of the Legislature.

#### PARAGRAPH IV (e): EASEMENTS, ETC.

**Scope.**—This sub-clause provides for the computation of court-fee for a right to some benefit to arise out of land which has not been otherwise provided for in this Act. An easement is such a right. An easement has been defined by s. 4 of Act V of 1882 as a right which the owner or occupier of certain land possesses as such for the beneficial enjoyment of that land to do and continue to do something or to prevent and continue to prevent something being done in or upon or in respect of certain other land not his own. Such easement for a right of way, air, light, etc., and a right to territorial fishery, malikana, etc., come within the scope of the section.

**Mines.**—A right to a mine is not a right to some benefit not otherwise provided for and hence a suit for the recovery of possession of a mine does not fall within this clause. *Sundarlal v. Garoline*, 16 C. L. J. 375.

**Suit relating to easements.**—Cases where a relief of injunction is also claimed—Where the plaintiffs sued for a declaration of right of way and drainage over a certain paramba and for a mandatory injunction ordering the defendants to remove the fences, wall, etc., that had been built in defiance of such rights, the subject-matter of the suit was neither land, nor house, nor garden but an easement over the same and that cl. iv (c) is the proper provision to apply. *In re Venkatakrishna Pathar*, 100 I. C. 263 = 1927 Mad. 348.

It is submitted that this decision may perhaps be reconsidered. The plaintiffs sought to value the suit as one for injunction pure

and simple under s. 7 iv (d). The lower court construed the suit as one for declaration with consequential relief and holding that iv (c) is the proper provision applied the Madras Proviso thereto and held the value should not be less than half the value of the paramba. The value was computed at 5 times the assessment under para v (b). The defendant went one step further and contended before the High Court, that the value should be the market-value of the paramba under para. v (e) and not the statutory value under v (b). This was not accepted by the High Court nor the lower court's decision that the Madras proviso applied. Jackson, J., construed the words 'with reference to' in the proviso, as meaning 'involving the possession of' land, houses or gardens and held that the proviso would not be applicable to easements at all. But the learned judge observes that the lower court "has correctly pointed out that it is a suit for declaration with consequential relief falling under s. 7 iv (c)". Of course s. 7 iv (c) is a general provision which will have to be applied only where there is no other specific provision in the Act applicable to a particular case. The clause (e) is a special clause enacted to apply to cases of easements and such 'benefits arising out of land.' The subject-matter of the suit was also held to be 'neither land, nor house nor garden but an *easement* over the same'. Where for instance the relief is for a declaration that a document is void and for cancellation thereof, the suit was held to fall under para iv-A as that specifically provides for that class of cases, and not under iv (c) though but for the existence of iv-A, it would be the proper clause to be applied. Similarly in the present cases it is submitted that clause iv (c) could be applied only if no such clause as iv (e) is in existence. But where there is a specific provision that alone should be applied in preference to iv (:). Further it seems hardly necessary to add that the phrase 'not herein otherwise provided for' occurring in clause (e) cannot justify the application of clause (c) to the present suit on the ground it has been thereby 'otherwise provided for,' though that phrase could be more appropriately included in clause (c) rather than in clause (e). It is therefore submitted that either clause (e) by itself or coupled with clause (d) applies to the present case instead of clause (c).

**Doorway.**—A suit to have a doorway closed is a suit relating to an easement. *Chadan v. Taleb*, 2 N. W. P. 41.

#### PARAGRAPH IV (f) SUIT FOR ACCOUNTS.

**Scope.**—This paragraph deals with suits for accounts. Though these are suits for money, still from the very nature of the action it may not be possible for the plaintiff to predicate exactly what the value of his claim is. It will only be an approximate one and it is this value that determines the court-fee as well as the forum. *Ijjathullat v. Chandra Mohan*, 6 C. L. J. 255.

**Order VII, R. 2 (2) C. P. C.**—Civil Procedure Code O. 7, r. 2, sub-clause 2 provides that where the plaintiff sues for an amount

which will be found due to him on taking unsettled accounts between him and the defendant the plaintiff shall state approximately the amount sued for. *Seetaram v. Hanuman Prasad*, 100 I. C. 632. Contrast with this the corresponding provision in the Court-Fees Act that "the plaintiff shall state the amount at which he values the relief sought" in a suit for accounts. This obviously implies that while the plaintiff is under an obligation to give an approximate valuation as per the requirements of the C.P.C. he can give an arbitrary valuation—which may or may not be an approximate one—under this Act. The whole trouble has arisen to quote the words of Sulaiman, J., in 47 A. 756, from the "circumstance that the amendments of the Court-Fees Act have not kept pace with the amendments of the Code."

**Section 11 of the Act.**—Though it is open to the plaintiff to fix his own value on the claim in a suit for account, still clause iv (f) has to be read along with s. 11 of the Act. Where it is provided that in suits for an account if the amount decreed is in excess of the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole amount so decreed shall have been paid. *Govinda v. Dayabai*, 9 Bom. 22.

Where owing to the inability of the party the court-fee was paid under Article 17 (vi) of Schedule II as for a case where the subject-matter is incapable of valuation, the court acting under s. 11 later on may direct the levy of an additional court-fee when the value is capable of determination. *Prince Mirzer v. Nawab Begum*, 24 I. C. 643.

**Order 7 Rule 11 of the Civil Procedure Code.**—Though the plaintiff could value his claim as he chooses still the court has got the power to reject a plaint under O. 7 r. 11 of the Civil Procedure Code, where the relief claimed is under-valued and the plaintiff fails to amend it as directed. *Balavant Rao v. Bhima Sankar*, 13 Bom. 517. See also *Shivandas Motumal v. Hariram*, 1933 Sind 322, in which it has been held that the provisions of the Court-Fees Act are controlled by O. 7, r. 1 (2) and r. 11 (b), C. P. Code and where the court finds that the relief has been valued arbitrarily or improperly the court can compel the plaintiff to revise the valuation and pay proper court-fee thereon. But see *Sundari Bai v. Collector of Belgaum*, 23 C. W. N. 763 (P. C.); *Bala Krishna v. Janki Bai*, 44 B. 331.

**Administration suits.**—Order 20 Rule 13 of the Civil Procedure Code relates to decrees in administration suits. It is essentially a suit for accounts and the application of the estate of the deceased to payment of the amounts payable therefrom. A creditor's suit for administration is a suit for accounts and his value determines both jurisdiction and court-fees. *Sashi Bhaskar Bose v. Maharaja Sir Manendra Chandra Nandi*, 44 Cal. 890 = 38 I. C. 835; *Katija v.*

*Sheikh Adam*, 39 Bom. 545; *Ma Thin On v. Ma Ngwe Hmon*, 12 Rang. 512.

### Suits for accounts.

(1) **Nature of account suits.**—The essence of a suit for accounts is that the sum which the plaintiff claims is an unascertained sum only to be arrived at by the taking of a regular account between the parties. The fact that the defendant claims a certain sum as due to him and that consequently some accounts have to be taken cannot give the suit a character of a suit for account. Where the plaintiff sued to recover a sum of money due on a commission agency account and the defendants denied the liability and pleaded that an account should be taken and the trial court passed a preliminary decree for accounts and the defendants appealed and valued the claim as a declaratory relief, it was held that the suit is not one for an account and that the same falls under paragraph (1) of s. 7 of the Court-Fees Act. *Pochalal v. Umedram*, 52 B. 904 = 1928 Bom. 476 = 30 Bom. L. R. 1284.

(2) **Suits for accounts as contrasted with suits for money.**—The distinction between para (i) and iv (f) is that in the one case the plaintiff sues for a definite sum of money which he alleges to be due to him from the defendant and on which he is to pay an *ad valorem* court-fee and in the other the plaintiff is unable to say what the amount due to him from the defendant is and he is therefore unable to claim a definite sum and consequently fixes a *pro forma* or imaginary valuation which may involve a subsequent liability to pay an *ad valorem* fee. "The main test is what is sued for, and the test has reference to what is asked for in the plaint and not to any question or dispute that may arise upon any pleading of the defendant" per Fawcett, J., *Pochalal v. Umedram*, 52 B. 904 at page 908. It has been held in *Kashetranath Benerjee v. Kali Dasi*, 21 C. W. N. 784, that "there cannot be a suit for accounts by the plaintiff against the defendant unless the defendant is under a liability to render accounts to the plaintiff." See also *Suryanarayana v. Raja of Vizianagaram*, 137 I. C. 871 = 1932 Mad. 565. "A suit for an account is a recognised form of action in English Common law, and its history is fully given in Story's Equity Jurisprudence, Vol. I, pp. 416 to 420. At first it was a very limited kind of suit, but it gradually got extended to any suit which depended upon a liability to furnish an account." In a suit for money pure and simple, the plaintiff is not suing an 'accounting party'. He is the 'accounting party' himself suing the defendant for a definite sum of money which he says is due to him. There may be a case also where both the parties to a suit are accounting parties as for instance where each of two merchants keeps his own accounts of their mutual transactions. In such a case there is a mutual account, and there is an obligation on each side to render accounts to the other. There is also the suit where the plaintiff though not the accounting party cannot

state the precise amount due to him without the accounts of the parties being examined. If the suit is on a settled or stated account it would be a suit for money. But if it is on an open account the taking of accounts by the court is its primary incident. It is therefore a suit for an account. *Pochalal v. Umedram*, 52 B. 904.

Where in a suit it was prayed that the defendant should either be prevented from cutting trees from the suit forest or should keep account of trees cut, it was held to be a suit for accounts. *Gulab Singhji v. Lakshman Singhi*, 18 Bom. 100; *Rup Chand v. Srimathi Khirodamayi*, 75 I. C. 567 = 1923 Cal. 329.

**(3) Partnership Suits.**—An application to wind up a partnership and for taking accounts falls under this paragraph. *Abadali v. Jamiruddin*, 10 C. L. R. 160; *Bhogilal v. Papat Bhai*, 7 Bom. 125.

**(4) Trustee's accounts.**—Where a scheme suit was filed and there was a prayer that the trustees should be called upon to account for the receipts of temple moneys by them, it was held that the suit did not fall under this clause as it is not the plaintiff but the temple that is entitled to the amounts that may be found due from the trustee. *Ramrup v. Sitaram*, 7 I. C. 92.

**(5) Administration suits.**—For suits held to be for administration and consequently treated as suits for accounts, see *Khatija v. Sheikh Adam*, 30 B. 545 = 29 I. C. 949; *Saraja Bala Dasi v. Jogmaya Dasi*, 45 C. 634 = 41 I. C. 693.

Suit for construction of will and declaration that the estate has been administered and that the executors may be removed from possession and a receiver appointed to manage the estate, was held to be a suit for a declaration with consequential relief. *Rupchand v. Srimathi Khirodamayee*, 75 I. C. 567 = 1923 Cal. 329.

**(6) Partition suit.**—A prayer for accounts in a suit for partition of properties in the joint possession of the plaintiffs and defendants who had become divided in status is leviable to separate court-fee under this clause. *Manikkam Pillai v. Murugesam Pillai*, 64 M. L. J. 576 = 143 I. C. 755 = 1933 Mad. 431.

**Valuation for jurisdiction.**—This is one of those sections of the Court-Fees Act which are not excluded by s. 8 of the Suits Valuation Act from the application of the rule that the valuation for court-fees and jurisdiction should be the same. Hence two different values could not govern such actions. As has been held in *Jogesh v. Durga Prasad*, 36 All. 500 = 24 I. C. 679, the plaintiff cannot give a fanciful and fictitious value for jurisdiction. When the subject-matter is not capable of correct valuation, it stands to reason to hold that the plaintiff cannot in one breath have a low valuation for the purposes of escaping payment of high court-fees and at the same time puff up its value for the purpose of jurisdiction so that he may have his suit tried by any class of tribunal as suits his fancy. There cannot be different kinds of arbitrary valuations. Though it must be conceded that there is nothing in the Court-Fees

Act to preclude such arbitrary valuation, still the prevailing view is that the valuation for court-fees and jurisdiction should conform to the real value of the relief sought. For a case where the valuation for jurisdiction was taken as the value for court-fees, see *Pothi Annapurnayya v. Pothi Nagaratnamma*, 92 I. C. 730=1926 Mad. 591.

**Valuation for court-fees: The Suit.**—It is provided by O. VII r. 2 C.P.C. that the plaintiff should give an approximate valuation for the relief he claims in a suit on accounts. But it may be noticed that the wording of para 4 of s. 7 of the Court-Fees Act is not exactly as that in the Code of Civil Procedure. In the Act the plaintiff is given the liberty to value the suit as he chose and apparently there is no restriction on the plaintiff's discretion requiring him to fix such a figure as will be approximate to the real value of his relief. This difference may not perhaps be of much practical importance as there is a sufficient safeguard in s. 11 of the Act whereby, if the actual value of the relief granted to plaintiff exceeds the tentative value fixed by him, the court has got the power to call upon the plaintiff to make good the deficit and the revenue is thereby protected. Still, it is unfortunate that there should be any difference in language between the two enactments in respect of a particular suit. The reason for this divergence is apparently due to the fact that the Court-Fees Act, having been enacted long prior to the present Code of 1908, no attempt has been made to keep the former Act properly amended so as to accord with the provisions of the Civil Procedure Code—*vide* the observations of Justice Sulaiman in 47 All. 756 at page 759. The current view is that the plaintiff in an account suit can put his own valuation on the relief claimed by him. "The option or discretion of the plaintiff in fixing his valuation is not confined to those cases where the value of the relief cannot be ascertained at the time the plaint is presented though possibly combined with other circumstances the fact that such relief can be ascertained might be a reason for holding that the suit for accounts does not lie. The plaintiff is entitled to exercise the privilege of valuing his relief at any figure he chooses and the stamp will have to be made up subsequently if relief of greater value was granted to him." *Rikkhesh v. Melaram*, 1926 Lah. 242. See the recent decision of the Madras High Court in *Kandaswami Pillai v. Arunachalam Pillai*, 139 I. C. 105=35 L. W. 846=1932 Mad. 656, that it is open to the plaintiff to value a suit for accounts as he likes, and that even if during the course of the trial he should state in his evidence that far larger amounts are due to him, it is not open to the court to require him to revise the valuation and pay additional court-fee. But see cases cited under the heading "O. 7, R. 11, C. P. Code" *supra*. The plaintiff is entitled to pay court-fee on the value he had thought fit to give to the relief sought notwithstanding that he had through mistake or inadvertence stated the value for purposes of jurisdiction at a different figure. *Suryanarayana v. Raja of Vizianagaram*, 137 I. C. 871=1932 Mad. 565.

**Decree in excess of valuation of suit claim.**—This is provided for by s. 11. It is obvious that where the plaintiff values his claim in a suit for accounts under O. 7 r. 11 of the Civil Procedure Code, it can only be an approximate valuation as it sets out only what the plaintiff thinks will be the result of his account taking. When the amount is ascertained any excess court-fee payable is safeguarded by s. 11 of the Act. The plaintiff will have to make good the fee that may be necessary for the amount of excess decreed. *Rikki Kesh v. Malaram*, 94 I. C. 650=1926 Lah. 242. If the plaintiff fails to do so, the decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed shall have been paid to the proper officer. See further, commentaries under s. 11 *infra*.

### **Valuation for court-fees : Appeals.**

**General.**—An appeal in an account suit might be preferred either from a preliminary decree or from the final decree. The appellant may be the plaintiff or the defendant. The subject-matter of the appeal may be co-extensive with the subject matter in the suit or otherwise. Further a combined appeal both from the preliminary decree and the final decree might also be preferred if the appeal time from the preliminary decree has not elapsed before the final decree is passed or separate appeals might be preferred by one or the other of the parties one from the preliminary decree and other from the final decree and the question would arise as to whether court-fee for the same amount should be paid twice over. These are discussed in detail below.

### **Appeals from preliminary decrees.—**

(A) *Where the subject-matter of the appeal is not co-extensive with that in the suit.* In this case there is no difficulty and all High Courts hold the view that the plaintiff or the defendant is entitled to put his own valuation on the subject-matter of the appeal. The leading decision in Madras on which the later Madras decisions were based is *Samiamavali v. Minammal*, 23 M. 490. The learned judges refer to the penultimate paragraph of the section where it is stated that the value is according to the amount at which the relief is valued in the plaint or the memorandum of appeal. That might seem to denote that the appellant is equally as the plaintiff entitled to fix his own valuation on the appeal irrespective of the value of the suit. They state thus "It is suggested that in appeal the defendant may depart from the valuation given by the plaintiff although the subject-matter is identical. This construction of the Act would lead to such anomalies that we are unable to accept it. The reference to appeal in the last paragraph but one of the sub-section may well apply to the case where the subject of the appeal is not co-extensive with the subject-matter of the suit, in which case it would be unjust that the party appealing should be bound by the original valuation." See also

the observations of Sulaiman, J., in *Chunni Lal v. Sheo Charan*, 47 All. 756. Commenting on an earlier case of the Allahabad High Court *Khanhaiya Lal v. Seth Ram Sarup*, 44 A. 542, and a decision of the Patna High Court *Kuldip Sahay v. Harhar Prasad*, 75 I. C. 841, the learned Judge observed thus "I may point out that the cases in 44 All. and 75 I. C. are distinguishable because the defendants in those cases, in appealing had not appealed from the whole decree but had admitted their part liability. Thus the identity of the subject-matters in the first court and the court of appeal was not the same. It may therefore be said that as there was no valuation by the plaintiff of the subject-matter in dispute in appeal it was open to the defendant to value it according to his own estimate." It is therefore clear that where there is no identity of the subject-matter in the suit and in the appeal the appellant is not bound to value the appeal as in the plaint. See *Mahomed Rahmoo Mowji v. Ibrahim Gangji*, 98 I. C. 909 = 1927 Sind 100 and also the Madras F. B. decision in 39 M. 725 discussed *infra*.

**(B) Where the subject-matter in the appeal is co-extensive with that in the suit,**

(1) Where the plaintiff is the appellant, then, he is bound by the value given by him in the plaint, *Firm of Mohmod Rahmo v. Ibrahim Ganji*, 1927 Sind 100. But some doubt is thrown on this proposition by the observations of Justice Ramesam in a decision of the High Court of Madras in *Re Nukala Venkatanandam*, 56 M. 705. It was held—though it was only an appeal by the defendants—that in an appeal relating to the accounts of a partnership, the appellant, whether plaintiff or defendant, can give his own valuation under s. 7 (iv) (f) of the Court-Fees Act and pay court-fee on it. It is respectfully submitted that the correctness of this decision is open to question and it may well be reconsidered. For further discussion see below.

(2) Where the defendant is the appellant there is a divergence of views between the several High Courts. There are two possible views and they are summarized in *Chunni Lal v. Sheo Charan*, 47 All. 756 as follows :—

"One view is that the valuation given by the plaintiff in his plaint and by the defendant in his appeal ought to be the same where the subject-matter in dispute is indential. 'After all it is the plaintiff who puts forward a claim, whether it is a true one, a false one or an exaggerated one.' The subject-matter in dispute is the amount claimed by the plaintiff whether that claim is just or unjust. It would therefore seem quite reasonable to say that when the subject-matters are identical the defendant ought to value his appeal according to the valuation put by the plaintiff in his plaint which really represents the amount claimed by him whether the defendant admits it or not."



The other view is that in cases coming under s. 7 (iv) the valuation put by the plaintiff on the subject-matter in dispute is often an arbitrary one and particularly in a case falling under sub-clause (iv) (f) his valuation is a tentative one, it not being known at the time what would be the exact amount found due to either party after the accounts are taken. If under such circumstances, the plaintiff fixes a figure arbitrarily and haphazardly which he considers may be found due on account being taken, there is no just ground why the defendant, when appealing should be tied down to this haphazard estimate, when on the face of it, the valuation is merely tentative. *Ibid.*

The first sets out the Madras view followed by the High Courts of Bombay, Sind, Lahore, Patna, etc., while the second represents the Allahabad view followed in Nagpur.

**The Madras view.**—The leading case is *Srinivasacharlu v. Perindeeviamma*, 39 M. 725 F. B.; the judgment is extremely brief and could well be quoted *in extenso*. "The decision in 23 M. 490 has been consistently acted on and is in accordance with the decision in 15 B. L. R. 173 and 13 C. W. N. 815. We are not prepared to differ from it and are of opinion that the appellant is bound by the valuation in the plaint." There was consequently some justification for the criticism of this judgment by Sulaiman, J., in the 47 Allahabad case, where he observes thus "I note that Wallis, C. J., who delivered the very brief judgment of the court was one of the judges who had referred the case to the F. B. on the ground that they felt some doubt about the correctness of the decision in 23 Madras 490 and further the F. B. was chiefly influenced apparently by the consideration that that decision had been consistently acted on."

The Madras view is followed in BOMBAY, in *Pochalal Ranchhoid v. Umedram Kalidas*, 52 B. 904, where the following question was considered. "Whether in a suit for an account, the appellants were bound by the valuation put on the claim in the plaint or were entitled to make their own valuation?" It was held that the Allahabad decision in 44 All. 54 could be distinguished because there the appellants did not deny their liability to account while in the 52 Bombay case they totally denied their liability to account and the case would therefore be covered by the decision in 39 Madras and the appellants would be bound by the valuation in the plaint. But in a recent case (*Vershikanjih v. Kakukanji*, 37 Bom. L. R. 148) this decision was held to have been overruled by the Privy Council decision in *Faizullah Khan v. Mauladad Khan*, 56 I. A. 232 = 10 Lah. 737. But as to the real effect of the Privy Council decision see commentaries below.

The same view was taken in SIND. It was held that where the plaintiff had obtained a preliminary decree for an account and the defendant or the plaintiff appeals against the decree, the valuation once fixed by the plaintiff must be adhered to unless the subject-matter of the appeal is not identical with that of the suit, in which case of course it is open to the defendant to value his appeal differently.

*Firm of Mahmed Rahmoo Mowjee v. Ibrahim Gangji*, 1927 Sind 100. See also *Motimal v. Molap Bai*, 79 I. C. 923.

The CALCUTTA High Court has also taken a similar view in *Banwari Lal v. Shoe Shanker*, 1 I. C. 675 and also the PUNJAB High Court in *Kanji Mal v. Panna Lal*, 28 I. C. 262.

**The Allahabad view.**—The opposite view that could compendiously be called the Allahabad view is found in the decision, *Kanhaya Lal v. Seturam*, 44 All. 542. There it was held that a defendant appealing against a preliminary decree passed against him was entitled to put his own valuation in the appeal and that he was not bound to accept the plaintiff's valuation. Reference was made to 39 M. 725, and it was observed thus "I do not know if the learned judges who formulated this decision were thinking only of a preliminary decree or had in mind the possibility of an appeal against a final decree in a suit for accounts." And their Lordships doubt the correctness of the Madras view thinking that it would be inequitable in the case of appeals against final decrees to apply the original tentative valuation put on the suit by the plaintiff." With due deference it is submitted that there has been a misapprehension about the decision in 39 Madras. Even the later decision of the Allahabad High Court in 47 All. 756, does not entertain this doubt as to the exact scope of the Madras decision. It is one thing not to accept the decision but it is quite a different thing to state that there is any doubt as to whether the Madras decision related to appeals from final decrees as well, and direct criticism against it on the supposition that it related to appeals against final decrees while it did not. In 47 A. 756 at page 764 it is stated "In 39 Madras 725 F. B. there was a preliminary decree for accounts followed by an appeal against the whole preliminary decree." It is therefore clear that the observations in 44 A. 542 really miss the point.

This was followed by a later judgment of the same court, in *Chunni Lal v. Sheo Charan*, 47 A. 756. The whole case law on the subject was discussed and in his leading judgment Sulaiman, J., has set out the point of view of the Allahabad High Court. "The main question is whether it was open to the defendant to put a valuation different from that fixed by the plaintiffs in their plaint. The question is not free from difficulty because there is a clear conflict of opinion between the various High Courts. The MADRAS High Court has clearly laid down that the valuation once fixed by the plaintiff must be adhered to at subsequent stages unless of course the identity of the subject-matter is different. *Samiya Mavali v. Minam-mal*, 23 M. 490; *Srinivasachari v. Perundeviamma*, 39 M. 725. The PUNJAB High Court in the case of *Kanji Mal v. Panna Lal*, 28 I. C. 262 and the CALCUTTA High Court in the case of *Bunwari Lal v. Daya Shunker*, 13 C. W. N. 815, had inclined towards the same view. On the other hand there is an observation of Tudball, J., of the ALLAHABAD High Court in the case of *Bhola Nath v. Parsolain Das*, 32 A. 517, which supports a contrary view though it was not

necessary to decide that point in that case. But in the case of *Kanhaiya Lal v. Seth Ram Sarup*, 44 A. 542, Piggott, J., was of opinion that the view of the Full Bench of the MADRAS High Court was not correct. The ALLAHABAD decision was followed by the PATNA High Court in *Kuldip Sahay v. Harihar Prasad*, 75 I. C. 871." Then the learned judge goes on to observe that this difficulty has arisen from the fact that the Court-Fees Act has not kept pace with the amendments of the Code of Civil Procedure and that the Act was enacted at a time when under the then existing C. P. C. there was no such thing as a preliminary decree distinct and separate from a final decree, "The language of the old Court-Fees Act is now sought to be applied to a state of things which could not have risen in the same acute manner when the Act was passed." Then the several obvious anomalies existing in the Act are detailed and the view of the Allahabad court is summed up thus: "In cases where the valuation has of necessity to be arbitrary and tentative the person who has to present a petition or plaint or appeal and who is called upon to pay the necessary court-fee will have to fix the valuation, and unless the court is of opinion that the valuation has been put down fraudulently, it will be difficult not to accept the valuation so made."

**Lahore.**—In *Thakur Das, v. Daulat Ram*, 1926 Lah. 189, the LAHORE High Court took the same view as the Allahabad High Court, that a defendant appealing against a preliminary decree can put his own valuation on the subject-matter of the appeal and need not follow the valuation given by the plaintiff but has in the latest decision *Batna Ram v. Rahimatullah*, 1931 Lah. 143 taken the Madras view. See also *Harichand v. Madanlal*, 1930 Lah. 832; *Kanji Mal v. Panna Lal*, 28 I. C. 262.

**Nagpur.**—The Nagpur Court also has followed the decision in 47 All. 756 and held that it is open to the appellants in an appeal against preliminary decree in a suit for accounts to fix their own value provisionally for purpose of court-fees. See *Binraj v. Kisanlal*, 141 I. C. 277 = 1933 Nag. 127.

**Patna.**—In *Kuldip Sahay v. Harihar Prasad*, 3 Pat. 146, the learned judges try to reconcile the two decisions, viz., 44 A. 542 and 39 M. 725 and observe that the two decisions are not necessarily contradictory; for in the Madras case the appeal was against the whole preliminary decree while in the Allahabad case the defendant did not deny his liability to render accounts but while admitting it took exception only to the form of the decree. Hence in the latter case the subject-matter in the appeal was not co-extensive with that of the suit. This is an explanation that even the judges in 47 All. 756 gave. But the real difficulty is that their lordships of the Allahabad High Court take the view that even where the subject-matter of the appeal is co-extensive with the suit, then also the defendant is entitled to fix his own valuation. When that is so, it is submitted with due deference that there is no point gained in reconciling the ultimate decision on grounds other than what the

judges who gave the decisions based them on. As a matter of fact in the 3 Patna case the subject-matter of the appeal was different from the subject-matter in first appeal. In *Phulartand Coal Coy. v. Burrakar Coal Coy.*, 1930 Pat. 605 = 128 I. C. 795, it has been recently held that where the liability which has been found to exist by the trial court is denied *in toto* or where liability is denied for a portion of the claim, it is not open to a defendant appealing from the decree to value his appeal otherwise than at the value which the plaintiff has placed upon his relief. The view of Patna High Court is thus not only that where the defendant appeals from the whole decree the value of the appeal should be the same as that of the suit, but that even an appeal against a portion of it should be valued at the amount at which that portion was valued in the plaint.

**The conflicting views considered.**—The view of the Allahabad High Court in 47 A. 762 is sought to be supported for the following reasons :

(a) "The defendant who has all along been contending that he is being made the victim of a wholly extravagant claim should be permitted to bring his appeal against the preliminary decree without being penalised in court-fees by reason of the heavy valuation put upon his claim by the plaintiff." 44 A. 542. This position is fully answered by the following extract from the decision in 1927 Sind 100. "The plaintiff has no doubt a certain amount of latitude given to him to value the relief and unless his valuation is grossly inadequate or improper, the court does not interfere. It is, all the same, presumed to represent as fair a value of the subject-matter as the case admits. Can it then be said that it is open to the plaintiff to contend that he should be allowed to put a different value on the same subject-matter when he is appealing from his non suit and if not can it again be said that it is open to the unsuccessful defendant who fails to challenge the plaintiff's valuation at the proper time and who must therefore be deemed to have acquiesced in its being not grossly inadequate or otherwise improper, to contend that he should be permitted to put a different valuation upon it when appealing?"

(b) "It may not be easy to determine in every case whether an appeal is to be regarded as an appeal against part only of the decree. The appellant might easily refrain from appealing against an entirely negligible portion of the decree against him solely with the deliberate intention of evading the rule that he must value at the total valuation made by the plaintiff if he appealed against the whole decree. I do not find in principle any marked dividing line," 47 A. at p. 767. But this is no special feature in an appeal in an account suit. For instance, in an appeal from a decree in a suit for redemption of mortgage though the right to redeem was not seriously pressed in the trial court, the appellant is not precluded from putting that as one of the grounds of appeal—though he never intended agitating it—with a view to pay a lower court fee on the valuation of the mortgage amount rather than an *ad valorem* fee on the amount in dispute. The existence of such

loopholes in the Act of which a defendant appellant might take advantage of is no justification to give him the entire discretion in the matter of valuation.

(c) "The provision in the section that the plaintiff shall state the amount is merely in order to give a starting point and not with any intention one way or the other, that it should or should not govern the appeal. The legislature did not intend to say, and has not said anything as to how the valuation should be arrived at." The following extract sets out the Allahabad point of view on this argument. "It is a sound rule of interpretation that fiscal Acts should be construed strictly against the Government. The appellant defendant cannot be called upon to put a higher valuation on his appeal and consequently to pay a larger sum of court-fees unless the provisions of the Court-fees Act clearly require it. Schedule I Article I requires an *ad valorem* fee on the amount or value of the subject matter in dispute on a memorandum of appeal not otherwise provided for in the Act. The present appeal falls under s. 7 sub-section iv, clause (f) and therefore the amount of fee payable is to be computed according to the amount at which the relief sought is valued in the plaint or memorandum of appeal. Taking the words literally, the defendants have valued the relief they seek in their memorandum of appeal at Rs. 550. They can therefore be called upon to pay court-fees on that amount only. The question remains whether there is anything else in this section which justifies a contrary conclusion. The last words 'In all such suits the *plaintiff* shall state the amount at which he values the relief sought' do not entitle us to import into the section words to the following effect: "and the amount stated by the plaintiff shall be the amount for purposes of memorandum of appeal." It is true that the legislature has omitted to say that the *appellant* shall state the amount at which he values the relief sought in the appeal and has merely required the plaintiff to state it, although sub-clause (iv) clearly refers both to the plaint and the memorandum of appeal. But this omission does not justify an inference that the memorandum of appeal must necessarily have the same valuation as the plaint. It is unnecessary to speculate as to what might possibly have been the reason for omitting the word 'appellant' from the last two lines. It is sufficient to say that the defendant cannot be called upon to pay court-fees on the amount of valuation given by the plaintiff when the language of the section does not clearly so demand. The statute must be construed in favour of the defendant who has to pay the court-fees. If the legislature considers that the language is defective, it is for the legislature and not for the court to cure the defect. The words must be interpreted as they stand."

But the short answer to this criticism is found in the judgment of Pigott, J., in 44 A. 542 at page 545 where the learned judge observes "It is no doubt a little difficult to understand why the legislature should have felt it necessary to add this proviso, in respect of the plaintiff without in express terms laying any analogous obliga-

tion on the appellant". Speculation on the intention of the legislature is always of doubtful utility and much more so in the case of the Court-Fees Act. The language of the section is clear and there is no getting over the fact that the word "plaintiff" alone is used.

Sulaiman, J., too has realised the difficulties arising from the Allahabad view, and observed as follows in 47 A. 762 at page 763. "I am conscious of the fact that in some cases this interpretation of the section (*viz.*, that the defendant need not accept the plaintiff's valuation) will be unsatisfactory and may lead to inconvenience, *e.g.*, the plaintiff may value his suit for accounts at a certain figure in the first court and may succeed; the defendant when appealing may value it at another figure and may succeed; and then the plaintiff in coming up in second appeal will have to revalue it at the original figure. The absence of uniformity is likely to be embarrassing but the result is due to the drafting of the section as it stands". With due deference therefore it is submitted that it is safer to give a literal construction to the section though it may not appear to be quite logical or permits an evasion of the rule than to import into the section words that are not in it and when even the construction that so follows is found to be "unsatisfactory and leading to inconvenience" to hold that "the embarrassing result is due to the drafting of the section as it stands."

**The Privy Council decision.**—In *Faizullah Khan v. Mauladad Khan*, 10 Lah. 737 = 56 I. A. 232 = 31 Bom. L. R. 841 (P. C.) = 56 M. L. J. 281 = 1929 P. C. 147 the plaintiffs valued their suit at Rs. 3,000 for the purpose of court-fee and asked for a rendering of accounts and a decree for Rs. 3,000 with a statement "if more than Rs. 3,000 be found due to the plaintiffs, they will pay an additional court-fee". The defendant challenged the plaintiffs' claim and asked for a decree in his favour for Rs. 29,000. The court negatived the plaintiffs' claim and passed a decree in favour of defendant for Rs. 19,991. This judgment was appealed from by both parties. The plaintiffs by their appeal challenged the decree against them for Rs. 19,991 and maintained that their own claim of Rs. 3,000 or less or more should be granted in their favour. They valued their appeal, for purposes of court-fee at Rs. 19,991 and paid the court-fee thereon. It was contended that the plaintiffs should pay court-fees in appeal on Rs. 3,000 *as well as on* Rs. 19,991. Their Lordships negativing the contention held that the court-fee paid was sufficient. Lord Tomlin observed:—"In section 7 the amount of the fee is to be computed, in suits for accounts, according to the amount at which the relief sought is valued in the plaint or memorandum of appeal. If, therefore, the appellant values the relief in the memorandum of appeal, and pays a fee thereon, that is the amount of fee properly payable. Of course, if the appellant recovers more, he pays the extra fee under section 11 of the Act. But you cannot complain that the amount valued in the memorandum of appeal is not the proper amount. In suits for accounts it is impossible to say *at the outset* what exact amount the plaintiff will recover. The Legislature

therefore, leaves it open to him to estimate the amount. That is the scheme of the Act". It is unfortunate that the P. C. decision is reported differently in different reports, some of them not containing for example the observation of Lord Tomlin quoted above either wholly or partially. The Bombay Law Reporter alone sets out the observation fully. The report in the M. L. J. omits the last three sentences, the most important portion of it. The other reports omit it altogether.

In *C. K. Ummar v. Ali Ummar*, 9 Rang. 165 (F. B.)=1931 Rang. 146, where the plaintiff sued for dissolution of an alleged partnership and for accounts and valued the suit originally at Rs. 15,000, but subsequently in giving evidence raised the value to Rs. 30,000 and paid additional court-fees on the trial court's order, and a preliminary decree was passed as prayed for, and the defendant appealed against the whole decree, denying the alleged partnership and saying that the suit was barred by limitation, and valued the appeal at Rs. 3,000 only, the Rangoon High Court held, relying on the supposed effect of the observations of Lord Tomlin quoted above and the words 'according to the amount at which the relief sought is valued in the plaint or memorandum of appeal' in section 7, clause (iv), that the valuation of the appeal was correct, that a defendant appealing from a preliminary decree in an account suit had always the liberty of valuing his appeal as he liked, and that the above Madras decision was not correct. So also in *Vershikanji v. Kaku Kanji*, 37 Bom. L. R. 148, an appeal by the defendant against a preliminary decree declaring that the partnership stood dissolved on a particular date and appointing a Receiver to take accounts, the Bombay High Court has held, that it was open to the appellant to estimate the amounts and value the appeal according to that estimate. The Privy Council decision is relied on in support of this and is held to have overruled the previous decision of the Bombay High Court in *Pochal Ranchoid v. Umendram Kalidas*, 52 Bom. 904. The construction put upon the Privy Council decision is, it is submitted, not correct. There appears however to be nothing either in the observations of their Lordships during the argument or in the body of the judgment in the P. C. case, to support the theory that a defendant appealing from the whole preliminary decree against him in an account suit can value his appeal at an amount different from that at which the suit was valued. There the appeal was by the plaintiffs. The plaintiff valued his appeal at Rs. 19,991, though he had valued the suit only at Rs. 3,000. The latter was a tentative value. The plaintiff sued for accounts and his estimate of what he expected to get on taking accounts was a decree for Rs. 3,000. But a final decree was passed after accounts were taken. The plaintiff found the tables turned and a decree was passed against him for Rs. 19,991. He has properly valued the appeal at that figure. There are only two methods of valuing the appeal, either as in the suit at Rs. 3,000, or for the amount ascertained in the final decree proceedings *viz.*, Rs. 19,991.

The latter is the proper value as the figure has been ascertained in final decree proceeding. If it is contended that what the appellant sought to avoid was only the decree against him and that his appeal was not to get what he prayed for against the defendant, the answer is both claims form part of a simple action for accounts and the appellant has valued the appeal according to, the higher relief. The P.C. decision cannot be considered to mean that the appellant need not value his appeal at Rs. 19,991, nor Rs. 3000, but that he could give any other figure he chose to put.

(a) The main reason given by their Lordships of the Privy Council for accepttng their approximate valuation of the appeal was, that under section 11 the balance court-fee could be recovered from them at the time of execution, should a decree for a higher amount be ultimately awarded to them. Section 11 applies only to a plaintiff and his suit. It does not apply to a defendant. Now the appeal in the Rangoon case was by the defendant. In the suit the defendant did not plead a set off or counter claim. His plea was merely limitation and denial of the partnership. He cannot therefore be regarded even analogously as a plaintiff. The subject-matter of a defendant's appeal is ordinarily not a claim by him to recover any amount, but only the liability which has been fastened upon him by the decree of the lower court and which he wants to get rid of in appeal. Section 11 is therefore naturally not designed to apply to him or to recover any additional court-fee from him. The main plank on which the Privy Council decision rested was therefore absent in the Rangoon case and the drawing on the Privy Council case for support in it, it is submitted erroneous. The balance court-fee due for any excess amount decreed to plaintiff can be recovered from him under section 11. But nothing can be recovered from a defendant under that section.

(b) It is provided in section 7, clause (iv) that "in all such suits the *plaintiff* shall state the amount at which he values the relief sought". The use of the word "*plaintiff*" here is significant. When the two provisions section 7 clause iv (f) and section 11 are placed in juxtaposition and construed with reference to each other, the reason why the Legislature gave the plaintiff alone liberty to approximately value the amount of his claim becomes apparent. Now, the provision in section 7, clause iv (f) when fully set out is thus: "Fees shall be payable in suits for accounts, (1) according to the amount at which the relief sought is valued in the *plaint* or *memorandum of appeal*; (2) in all such *suits* the *plaintiff* shall state the amount at which he values the relief sought". The word "*suit*" in this clause is not synonymous with "*plaint*". It is wide enough to include both *plaint* and *memorandum of appeal*. Compare the wording "*plaint or memorandum of appeal in a suit*" in Article 17 of Schedule II. The Legislature has advisedly used three different expressions, "*plaint*," "*memorandum of appeal*," and "*suit*" in the clause to connote three different ideas. The clause says that the *plaintiff* (not appel-



lant or defendant) has to state the value in the suit (and not merely in the *plaint*). This means that the value stated by him is to enure for the memorandum of appeal also. It is clear that the effect of the mention of memorandum of appeal in sub-clause (1) above is not to allow the appellant to state in the appeal a fresh valuation different from that in the *plaint*. The sub-clause is only a general statement that fee is to be computed on the amount or value stated. It does not say who is to state that value. That particular direction is given in sub-clause (2), which completes the sense in sub-clause (1). If it had been intended to allow the appellant to value the memorandum of appeal differently from the *plaint*, the Legislature would have said in sub-clause (2) the plaintiff or *appellant* shall state the amount". That would have made a parallelism with the "*plaint* or memorandum of appeal" in sub-clause (1). The mistaken view that "*suit*" in sub-clause (2) is equivalent to "*plaint*" in sub-clause (1) has led to the Rangoon decision, and the Allahabad decision which is also to the same effect. Once it is recognised that "*suit*" includes both "*plaint*" and "*memorandum of appeal*" all difficulty in interpreting the clause vanishes; and the clause and S. 11 would appear in their true perspective. [It may be worth noting that the above view embodied even in the previous edition of this book has found favour with the Allahabad High Court in *Sharfuddin v. Khadim Ali Khan*, 1934 All. 627, and has also been incorporated in the Act itself by Bengal Amendment Act VII of 1935 introducing a clause in S. 2 to the effect that "*suit*" includes an appeal from a decree.]

(c) Further, the reasoning in the Privy Council decision, instead of supporting the Rangoon view, appears rather to go the other way. The observations of their Lordships of the Privy Council that the sum awarded on appeal to the plaintiffs would in all likelihood be much within Rs. 19,991, the value stated by them, and that the court-fee paid may be not only in full but largely in excess of the true sum of relief at which a sound valuation could in the circumstances of the case be said to reach, appear to show that the valuation of the suit and the appeal cannot be arbitrary but must be approximate. This is consistent with the provisions of Order 7, Rule 2, C. P. C. 1908, that the valuation of a suit for account must be approximate. The C. P. C. is a later statute than the *Court-Fees Act* and in case of conflict between the two, the former should prevail. Their Lordships justified the valuation of the appeal before them, not on the grounds that the appellants could arbitrarily value the appeal but on the ground that the valuation was approximate. Lord Tomlin in the observation quoted above used the word "*estimate*." Now "*estimate*" does not mean an arbitrary stating of the amount, but connotes that the value stated should be as near the correct figure as is possible under the circumstances. In the Rangoon case, the defendants denied the existence of the partnership and stated that there was nothing at all due to the plaintiff. An estimate by them then of the value of the plaintiff's claim would come to zero point,

and that means that the appeal can be valued at nothing and has no subject-matter. This would amount to an absurdity, for under Sch. 1 Art. 1 every appeal has a subject-matter and value. After all, it is the plaintiff that knows his claim best and it is he and not the defendant that has to pay the additional court-fee under section 11. And he (plaintiff) valued his claim in the case at Rs. 30,000. There is no meaning in the defendant valuing it at Rs. 3,000, when he himself says that it is worth nothing. It appears therefore reasonable that the value set by plaintiff should prevail in the whole course of the litigation so long as the subject-matter remains identical. To allow a defendant-appellant to value his appeal differently from the plaintiff would lead to great anomalies. The Madras Full Bench decision, therefore, it is submitted, perfectly correct and its force has not been in any way detracted from by the Privy Council decision, and it is supported by the decisions of the Lahore, Patna, Calcutta and Sind Courts. The Rangoon decision is also based on the supposed view of the Patna High Court in 3 Pat. 146. But as stated above, in its latest decision 1930 Pat. 605, the Patna High Court takes the same view as Madras. See also *Baina Ram v. Rahmatullah*, 1931 Lah. 143. The rule is the same whether the defendant appellant denied the claim in toto or in part. *Phulartand Coal Co. v. Burrakar Coal Co.*, 1930 Pat. 605.

This decision (9 Rang. 165) was not followed in a recent decision by a Division Bench of the same court in *Mg. Po Nyun v. Daw Ngwe Bwint*, 1933 Rang. 410, where the suit was under sub-clause (c) of the same clause iv, and it was held that the general rule is that when the suit has been decreed in full and the appeal is against the whole decree the value of the appeal is the same as that of the original plaintiff. The facts were: Plaintiff filed her plaintiff, stating that she was in possession of certain land and asking for a declaration that a certain deed of gift which she had given to the defendant is of no legal effect whatever and merely records a benami transaction. She also asked for delivery of the deed to herself in order that it might be cancelled and for cancellation. She valued the suit at Rs. 13,489, that apparently being the value of the land covered by the deed of gift, and paid court-fee on it. The suit was decreed as prayed for. Defendant preferred an appeal from the whole decree and sought to value the appeal arbitrarily at Rs. 500 for purpose of Court-Fees, relying on the above decision in 9 Rang. 165. He contended as held in that case that in suits under cl. iv the plaintiff in the trial court and the appellant in the court of appeal is the person to make an estimate of the value of the relief that is claimed. But their Lordships distinguished that case in that the suit there was one for accounts under sub-clause (j), observing that "in a suit for accounts the value of the appeal is probably not the same as the value of the original suit." This is a practical dissent from the 9 Rangoon case as the subject-matter of the appeal there was identical with that of the suit. Their Lordships went on to observe that what cl. iv says is that "in all such cases the plaintiff

shall state the amount at which he values the relief sought" and that to allow the appellant to value his appeal, when the subject-matter is the same, at anything he likes is in terms making cl. iv read as "In valuing the relief the appellant may put any stamp he likes on the appeal without regard to the merits of the case and value of the amount in suit." In the end it was held that the appeal should be stamped on Rs. 13,489 and that the general rule in appeal is that when the appeal is against the whole decree and if the suit has been decreed in full, value of the appeal is the same as the value of the original plaint and that, of course, if the appeal is not against the whole decree other considerations would apply.

A plaintiff appealing from a decree wholly dismissing his suit must of course retain in the appeal his valuation put by him in the plaint, because he cannot be allowed to go on varying the value of his claim.

**Appeal from final decree.**—Where account has been taken and the amount ascertained and a final decree passed, and a party is appealing to get rid of the amount decreed against him or to have it enhanced or reduced, the subject-matter of the appeal is easily known and is a definite amount and he will have to value the appeal at that amount, that is to say, he will have to value the appeal at the decree amount if he wants to get rid of it wholly or at the amount by which he wants to have it reduced or enhanced. Where a definite sum has been decreed against a party and he appeals to get rid of it, it is rather difficult for him to contend that it is open to him to value the appeal at any figure less than the amount decreed against him. Such a proposition is on the very face of it hardly arguable at all. Where a suit was valued at Rs. 1,000 and a decree was passed for Rs. 11,000 in plaintiff's favour on taking accounts and the defendant appealed against it, it was held that the value of the appeal was Rs. 11,000 and not Rs. 1,000. *Budha Mal v. Rallia Ram*, 9 Lah. 23 = 1928 Lah. 157. Even in the Privy Council case *Faizullah Khan v. Maulad Khan*, mentioned above, the plaintiff did value his appeal at Rs. 19,991 being the amount decreed against him. But on account of the manner in which the said Privy Council decision has been interpreted by the various High Courts, the position has become more complicated. We have already shown how that decision has affected the position regarding appeals by defendants against preliminary decrees in suits for accounts. As regards appeals against final decrees, there have been since the above Privy Council decision, four decisions on the point, one by a Division Bench of the Madras High Court, *In re Venkatanadham*, 56 Mad. 705 = 64 M. L. J. 122 = 1933 Mad. 330, another by the Sind Court, *Shivandas v. Hariram*, 1933 Sind 322, the third by the Lahore High Court, *Naimati Bai v. Daulat Ram*, 1933 Lah. 633, and the fourth by the Allahabad High Court, *Sharfuddin v. Khadim Ali Khan*, 1934 All. 807. In the Madras case the appeal was by the defendant from a final decree directing him to pay certain sums amounting in all to Rs. 12,770-6 to plaintiff. The appellant did not seek a decree for any amount in his own favour, but

wanted to vacate the decree of the lower court for Rs. 12,770-6. He sought to value his appeal at a lower figure *viz.*, Rs. 5,500. It was held that he was entitled to do so, the Privy Council decision being interpreted in the same manner as in the Rangoon case above. The objection of the respondent that s. 11 did not apply to a defendant and that the Privy Council decision, where the plaintiff and not the defendant was the appellant, was based on s. 11 as seen from the observation of Lord Tomlin was negatived, it being observed that s. 11 was not exhaustive on the point and that the position of a defendant in an account suit just as in a suit for partition was analogous to that of a plaintiff. Says his Lordship Ramesam J, "Lord Tomlin referred to s. 11 of the Act, but it seems to me that s. 11 may not give adequate remedy to the Crown. . . . S. 11 no doubt furnishes one method but for the protection of the interests of the crown it is necessary to indicate what the proper practice should be. If the appellate court after the hearing and consideration of the appeal comes to a conclusion in favour of the appellant in respect of a far larger amount than what he has paid court-fees for, the proper thing would be to post the costs for orders and direct the appellant to pay additional court-fee, and only then the judgment should be delivered and the decree should be allowed to be drawn up. I think this protects the Crown's interest properly. . . . I may add that an appellant, whether defendant or plaintiff is in the position of a plaintiff in appeal at least in suits for taking accounts of a partnership and in partition suits. In such suits it has been held that every party is in the position of a plaintiff—*Vide* 1914 M. W. N. 155 and 12 L. W. 563. In the first of the above cases the defendant actually paid court-fee on the footing that his position is analogous to that of the plaintiff. In the latter case it was observed that the effect of the plaintiff being allowed to withdraw was to allow defendants 8 to 10 to become plaintiffs in his stead". His Lordship then referred to and dissented from the earlier Madras decisions that in appeals by defendants from preliminary decrees the same valuation as in the plaint should be adopted.

The decision is open to grave objections. In the first place, it is inexpedient to say that the Court-Fees Act is not exhaustive and that a subject can be taxed by applying the Act analogously. A fiscal enactment should be interpreted strictly, and where there is no express provision in the Act applicable to any particular matter, it is not permissible to charge any court-fee on it by applying to it analogous provisions of the Act expressly applicable to other matters. If s. 11 expressly applies only to a plaintiff and not to a defendant, it is not lawful to apply it to a defendant and charge court-fees by saying that the position of a defendant in an account suit is similar to that of a plaintiff. If necessary, a defendant appellant may be allowed to value his appeal as he likes, but no additional court-fees can and should be charged on his appeal after a decree is given in his favour. As authority for the position that a defendant in an account suit can be treated as a plaintiff for purpose of court-fees, his Lordship refers to:

the earlier decisions in partition suits, where defendants demanding their shares to be partitioned were viewed as plaintiffs and charged to court-fees. But his Lordship himself has dissented from that view and held in *Venkatasubanna v. Ramanadhayya*, 63 M. L. J. 845, only a few months before the present decision that though a defendant in a partition suit may be in the position of a plaintiff for other purposes, he is not a plaintiff for fiscal purposes and cannot be charged to court-fees. To say now that he is a plaintiff and is chargeable to court-fees is inconsistent. Further, in *Ramaswami Aiyar v. Ranga-swami Aiyar*, 61 M. L. J. 933 it has been held that in a suit for administration and accounts, however much the position of a creditor putting forward his claim may resemble that of a plaintiff, s. 11 of the Court-Fees Act cannot be applied to him analogously so as to charge any court-fee on his claim. It may be that in an account suit a defendant's written statement counter-claiming a decree in his favour is subject to payment of court-fees, but that is not because his position is analogous to that of a plaintiff but because of the express provision in Sch. I Art. 1 of the Act making such counter-claims in written statements liable to court-fees. This provision applies only to written statements in suits and not to appeals or appellants.

It is impossible and impracticable to apply the decision to appeals from preliminary decrees. His Lordship says that if the appellate court after hearing and considering the appeal comes to a conclusion in favour of the appellant, the court should stay its hand and not deliver judgment or draw up decree until he pays the additional court-fee necessary for the extent to which he succeeds in the appeal. But this extent cannot be measured and ascertained at the time but can be ascertained and known only if and when a final decree is passed.

If then s. 11 does not apply to a defendant-appellant so as to allow a tentative valuation of his appeal initially and charge additional court-fee on it later on under that section, it is clear that the appeal is chargeable at once with court-fees—the appeal from a final decree according to its subject-matter and the appeal from the preliminary decree according to the valuation in the plaint as held in *Srinivasacharlu v. Perindeamma*, 39 Mad. 725 (F. B.).

Further the observations regarding the plaintiff-appellant are also obiter as in fact it was the defendant that appealed in the Madras case of 56 Madras. The result of following the Madras decision will be that a plaintiff can put one value when filing a suit and choose his own forum but need not stick on to it and put in any figure he likes in appeal in spite of the possible identity of the subject-matter and that he can do so whether he appeals from the preliminary or the final decree and the defendant too can do so. This will lead to a deal of confusion and the principle must be logically applied to suits for recovery of moveables, declaration and injunction, etc. Of course one can understand that before a final decree is passed it may

not be possible to predicate the value of plaintiff's claim before accounts are taken. But what is the difficulty after the claim has been definitely ascertained and one party is found to be due to the other a definite sum? The proper construction and it is submitted the only proper construction of clause iv of s. 7 in the Court-fees Act, is to apply it only if the value cannot be known. For instance s. 7 iv (a) refers to a case of a suit for recovery of moveables which have no market value. Then it can be valued as the plaintiff chooses. Suppose it has a market value. Then s. 7 cl. 3 applies. Why? Because the cases set out in cl. iv apply only to cases where the value could not be ascertained. If the value becomes ascertained by the passing of a final decree then the right of the appellant to value as he chooses is at an end. In the Allahabad case *Sharfuddin v. Khadim Ali Khan*, 1934 All. 807, where the facts were similar to that of the Madras case in 56 Mad. 705 commented on above, the decision of the court was in accordance with the view expressed above. There the appeal was by the defendant against a decree for Rs. 10,000, passed in favour of the plaintiff in a suit for dissolution of partnership and accounts. The appellant claimed a decree in his favour for such amount as may be found due and valued the appeal at Rs. 1000. It was held that the valuation was arbitrary and could not be accepted and that the subject-matter of the appeal being the decree for Rs. 10,000 and interest, *ad valorem* court-fee must be paid on that amount. In this decision, the effect of the Privy Council decision is discussed at length and it is held that the ruling is inapplicable to a defendant's appeal against a decree for a definite sum of money passed against him. The above Madras decision in 56 Mad. 705 is also considered and dissented from.

In the Sind case *Shivanadas v. Hariram*, 1933 Sind 322, the facts were similar to those of the Privy Council case. The plaintiff had valued the suit tentatively at Rs. 200 and paid court-fes on it. The result of the suit was however unexpectedly against him. Not only did he not get a decree in his favour but he was ordered to pay a sum of Rs. 1,400 to the defendant. He filed an appeal disputing his liability to pay that sum and prayed for a decree in his favour and valued the appeal at Rs. 200. It was held that the test for determining what is the proper court-fee payable on a memorandum of appeal is "what is the value of the relief granted which is sought to be got rid of," and that the plaintiff was practically seeking two reliefs, *viz.*, to get rid of the decree for Rs. 1,400 which has been passed against him, and to get a decree for an additional amount to be passed in his favour, and that he must pay court-fee on Rs. 1,400 as well as on Rs. 200. It was also held that the provisions of the Court-fees Act s. 7 cl. iv (f) are controlled by O. 7 rr. 2 and 11, which require a suit for accounts to be valued *approximately, not arbitrarily*. As regards the Privy Council case the court observed that it was differently reported in different reports, and distinguished it as an appeal from a remand order and therefore as applying to the particular facts of the case, and

that even in that case the plaintiff had as a matter of fact paid court-fee on Rs. 19,991 the amount decreed against him. The above Madras decision *Venkatanadham, In re*, 56 Mad. 705 was dissented from.

In the Lahore Case *Nimati Bai v. Daulat Ram*, 1933 Lah. 633 the appeal was by plaintiff from a final decree passed in accordance with the report of two referees appointed subsequent to the passing of the preliminary decree, the plaintiff's objections to the report being disallowed on the ground that the referees had been appointed with the consent of parties. The appeal was preferred on a fixed Court-fee of Rs. 10. under Art. 17. On objection by the respondent, the plaintiff appellant gave up her contention to pay fixed fee under Art. 17, but relying on the above P. C. case and the decisions in 9 Rangoon 165 and 56 Mad. 705, argued that she had the option of fixing the value both for the plaint and the memorandum of appeal and paying *ad valorem* fee on that value and that she must be taken to have valued her relief at a figure for which a court-fee of Rs. 10 would be sufficient. But it was held that court-fee was payable on the excess amount claimed in appeal over that decreed in the lower court, the court observing "But I do not think that this would be proper, as the court-fee of Rs. 10 was not paid on this basis at all. It was for the plaintiff to value properly the relief sought in the memorandum of appeal as required by law, but she has not done so. The value of the relief would naturally be the amount which plaintiff claims in excess of the amount decreed in her favour in the trial court. Although plaintiff prayed in her appeal that the case should be remanded for her objections being decided on merits, the real relief she wanted was the amount claimed in her objections. It should be noted in this connection that the appeal lay from the decree and not from the order refusing to decide the objections on merits. The case might have been different, if it were impossible for the plaintiff to say what amount she would be entitled to. But as the learned District Judge points out in his judgment, the plaintiff claimed definite sums amounting to about Rs. 1,450 in excess of the sum decreed by the referees".

There is another recent Calcutta decision *Kailas Chandra Das v. Narayan Chandra Das*, 152 I. C. 97 = 59 C. L. J. 447 = 1934 Cal. 786 which indicates that the defendant appealing against a decree passed against him in a suit for accounts must pay court-fee on the amount of the decree. There the appellant however did not claim to value the appeal as he liked, but claimed that it was incapable of valuation on the ground that the plaintiff might not pay the court-fees on the excess amount decreed to him under s. 11 of the Act. The contention was overruled and it was held that the contingency of the plaintiff not paying the excess court-fee need not alter the value of the decree against the appellant.

**Conclusion.**—From the above, it is clear that in a suit for accounts—

(A) The appeal may not be co-extensive with the claim in the suit. In that case, both the plaint and the appeal may be valued as the plaintiff or appellant chooses.

(B) The appeal may be co-extensive with the suit.

(1) The appeal may be from the preliminary decree and

(a) the appellant may be the plaintiff. The appellant should value the appeal as in the suit, though due to a misapprehension of the Privy Council decision, there is some conflict even about this obvious proposition—See the observations in 56 Mad. 705.

(b) The appeal may be by the defendant. In this case it is submitted the value should be the same as the suit, though there is some conflict of decisions on the point, which has been further complicated on account of the Privy Council decision. Prior to that decision, the views of the High Courts of Madras, Bombay, Calcutta, Patna and Punjab and the Sind Court were that the defendant should give the same value for his appeal as the plaintiff gave for his suit while the High Court of Allahabad and the Judicial Commissioners' Court of Nagpur held the opposite view. But since the Privy Council decision, the Bombay High Court has changed its view and it would appear that the Madras High Court also is inclined that way from the broad statement of law laid down in 56 Mad. 705. But as observed above the change of view is due to some misapprehension of the scope of the Privy Council decision. Perhaps a distinction may be made between this case and the case of an appeal by a plaintiff.

(2) The appeal may be from the final decree. There could be no doubt that the valuation of the appeal, be the appellant the plaintiff or defendant, is the specific amount decreed by the trial Court, which is sought to be got rid of and the question of the appellant valuing the appeal as he chooses cannot possibly arise though in view of the comprehensively worded judgment in the Madras case in 56 Mad. it is not possible to state what the law really is, so far as Madras is concerned. The entire case-law on the point has been upset and settled views rudely shaken by the *obiter dicta* in the Madras case that whether the appellant is plaintiff or defendant, whether the appeal is from the preliminary decree or the final decree the appellant can value the appeal at any amount. This sweeping statement, it is submitted is not at all warranted by the Privy Council decision and pushed to the logical extreme will upset the whole trend of decisions and the scheme of the Court Fees Act, a piece of legislation which even as it is, is loosely and inartistically drafted and difficult to interpret. The task is certainly not made easier by this cluster of irreconcilable decisions.

### **Combined appeal.**

**Where a combined appeal is filed both from the preliminary and the final decree.**—It was held in *Damodara*



*Pandhano v. Haribhandu Patnaick*, 14 L. W. 389 that it is open to a party to file a single appeal against both the preliminary and final decree in a suit if the dates permitted. The learned judge observes as follows "The practice in the office is to collect only one fee for an appeal against both the preliminary and the final decrees according to the value of the subject-matter in the appeal. If the amount ascertained to be due when the final decree is passed is greater than the amount at which the plaintiff valued his relief in the first instance and if the court-fees on the appeal against both the appeals on the preliminary and final decrees are paid on the larger amount it would be reasonable to treat the greater as including the lesser amount".

### Separate Appeals.

**Where separate appeals are preferred against the preliminary and final decrees.**—In such a case it is quite inequitable to collect fees on both the appeals. If the plaintiff values his suit for accounts at Rs. 5,000 and a preliminary decree is passed, the defendant appealing against it has to pay a fee on Rs. 5,000. If meanwhile a final decree is also passed say for Rs. 6,000 and the defendant appeals against that also, it is really hard for him to pay again the court-fee on Rs. 6,000. The point has been dealt with in *Budhu v. Niamat Rai*, 4 Lah. 406=1923 Lah. 632 and *Kanti Chandra v. Radha Raman*, 57 Cal. 463=1929 Cal. 815=33 C.W.N. 743. *In re, Supputhayammal*, 55 Mad. 664=138 I. C. 218=62 M. L. J. 624=1932 Mad. 453, the case law on the point has been reviewed and it has been held that when the same party, who has filed an appeal against a preliminary decree for accounts and paid court-fee on the value as fixed by the plaintiff in his plaint, files along with or pending that appeal an appeal to the same court against the final decree ascertaining the amount due according to the preliminary decree, he may get credit in the appeal attacking that amount for the court-fee already paid on the appeal against the preliminary decree. But the court observed that this doctrine could not be extended to cases where the appeal against the final decree is filed after the decision in the appeal on the preliminary decree. It may be noted that at the time when the Court-Fees Act was enacted, there was only one decree in the suit and there were not two separate decrees preliminary and final; and therefore two separate appeals by the same party in the suit were not contemplated then. It is only the Civil Procedure Code of 1908 that directed a preliminary decree to be passed first and a final decree later. See also commentaries under Sch. I, Art. 1.

**Where a preliminary decree for accounts is passed in a suit for money.**—Where in a suit for the recovery of a specific sum of money a preliminary decree was passed and an appeal was preferred it was held that it nevertheless continued to be a suit for money. *Pochalal v. Umedram*, 52 B. 904. Fawcett, J., observes at page 912 of the report "It seems to me absurd that although the plaintiffs are suing to recover a definite sum of money their suit should be held

to be one for an account, in which they could place a valuation of Rs. 5, and so avoid paying full court-fee leviable under clause (1) of s. 7. Even a suit for the recovery of money, the precise amount of which could not be ascertained unless the accounts of the parties are examined has been held not to be excluded by Art. 31 of the Provincial Small Causes Courts Act." The character of a suit is determined by the cause of action and the relief actually sought and not by any side issues that the defendant may raise.

**Where the court-fee paid is deficient.**—Where the appellant while claiming the full amount sued for paid only a court-fee for a lesser amount, the whole appeal will not be dismissed but a decree will be awarded to the appellant for not more than the amount for which the fee was paid. *Firm Nihal Chand v. Sardari Mal*, 1925 Lah. 558.

## PARAGRAPH V: SUIT FOR POSSESSION OF LAND, HOUSES, GARDENS, ETC.

**Local amendments.**—The clause has been amended locally in the various provinces with a view to increase the revenue. The amendments are printed in italics in the body of the Act itself. In the United Provinces also, the value of the land coming under clause (a) is 20 times the revenue and that of the land coming under clause (b), 10 times the revenue by virtue of the United Provinces Court-Fees (Amendment) Act III of 1932 extended by Act XI of 1934.

**Principles of valuation.**—The principle underlying the methods of valuation enunciated in the various clauses of this paragraph is, as stated by Coutts Trotter, J., in *Godavarthy Sundaramma v. Mangamma*, 19 M. L. T. 266, that wherever one can calculate with certainty the amount of revenue payable on a land or plot, the value of it should be taken at a multiple of that revenue and that wherever it is not so possible to measure the revenue the value should be taken at the market value.

It is necessary to explain here preliminarily the meaning of term "estate" mentioned in them: This is given in the explanation added to the paragraph. Therein it is stated that an estate is any revenue-paying land, concerning the payment of the revenue of which a separate engagement has been executed in favour of the Government or which in the absence of such engagement is separately assessed with revenue. Thus any revenue-paying land is an estate (1) if there is a separate agreement executed to pay that revenue, (2) or where there is no such agreement, if the land is separately assessed with revenue. According to the 2nd part of the explanation therefore, a land or plot separately assessed with revenue can be an estate only if there is no engagement executed about it as regards the payment of the revenue. Therefore if a part of an estate is separately assessed, but if there is a separate agreement executed for the payment of the revenue on the estate, then the part so assessed does not become an

estate, *Haliman v. Media*, 55 All. 531, where the suit was about a *khewat khata* or separately assessed part of Mahal or estate and it was held that as the proprietor of the Mahal of which the *khewat khata* is a part had executed an engagement to the Government for the revenue assessed upon the Mahal it cannot be said that the *khewat khata* has been separately assessed with revenue "in the absence of such engagement."

### CLAUSES (a) AND (b).

**Scope.**—These relate to cases where the land is an entire estate or a definite share of an estate paying annual revenue to Government or forms part of such an estate and is recorded in the Collector's register as separately assessed. Clause (a) applies to the case where the revenue is permanently settled and clause (b) where the revenue is settled but not permanently. Thus the multiple of the revenue (10 or 5 times as the case may be or a larger multiple according to the amendmends of the several Local Legislatures) forms the value of the land sought to be recovered only if the land is assessed with revenue whether permanently or not and the land forms an entire estate or a definite share thereof, *Kandaswami v. Subbai Goundem*, 46 M. L. J. 345 = 1924 Mad. 646, or if it is not a definite share, but forms only a part thereof, then if that part is searately assessed with revenue and recorded in the Collector's register accordingly, Where it is not so, i. e., where the land is not (i) an estate or a definite share of it, or (ii) a separately assessed part of it, clause (d) applies and the valuation should be according to the market-value. It may be noticed that though there is provision in the 1st half of clauses (a) and (b) for a definite share of a whole estate, there is no corresponding provision in the 2nd half of either for the case of a definite share of the *part* (of an estate) that is separately assessed with revenue. This lacuna was remedied as regards cl. (b) by the Notification of the Government of India No. 4650, dated the 10th September 1889 which fixes the method of valuation in such a case "when *part* of an estate paying annual revenue to Government under a settlement which is not permanent, is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter of a *suit* for the possession of or to enforce a right of pre-emption in respect of a *factional share* of that *part* shall for the purposes of the computation of the amount of the fee chargeable in the suit, be deemed not to exceed five times such portion of the revenue separately assessed on that part, as may be rateably payable in respect of that share."

**Notification—origin of.**—Shortly after the passing of the Court-Fees Act, in *Haidar Ali v. Sondha*, (1880) Punjab Record 102 the plaintiffs, sons of their father, (a Rajput), by a Rajput wife sued to set aside a gift by him to his son by a Moghlani woman, of  $\frac{1}{3}$  share of a holding separately assessed with revenue in a temporarily settled estate, and for possession of it. In the suit they had tendered a stamp calculated on 5 times the revenue payable on the share claimed,

under clause v (b) of the Act, and contended in appeal that the lower courts had wrongly levied stamp on the market value under cl. v (d). It was held (Berkley, J.) "The holding,  $\frac{1}{3}$  of which is claimed, not being a definite share in the estate, the land sued for cannot be regarded as such a share. The stamp has therefore been correctly calculated in the courts below upon the market value of the land. *There is no provision in the Court-fees Act for the value of a fractional part of a holding recorded in the Collector's Register as separately assessed with land revenue*, being calculated on the land revenue, and the market value must therefore be taken under cl. v (d)." (The italics are made now). This was followed in *Mst. Jian v. Mst. Nadir Nishan*, (1883) Punjab Record 6. It would appear that as a result of these rulings as will be shown presently the Notification was issued by the Government of India that a suit for possession of a "fractional share" of a separately assessed part of an estate assessed with revenue under a temporary settlement need be valued only at 5 times such portion of the revenue separately assessed on that part as may be rateably payable in respect of the share. This is now item 18 in the consolidated Notification issued later in 1889. It would be seen from the Punjab decision quoted above that "definite share" and "fractional share" are used there as convertible terms. The gist of the decision there was that the holding (separately assessed part)  $\frac{1}{3}$  share of which was sued for, not being itself a definite share of the whole estate of which it formed a part, the  $\frac{1}{3}$  of it sued for could not be a definite share of that whole so as to render the 1st half of clause v (b)—relating to definite share of an estate—applicable, that though the  $\frac{1}{3}$  was a definite or fractional share of the holding or assessed part, there was no provision in it, *i. e.*, for a definite share of a part, in the 2nd half of cl. v (b) corresponding to the similar provision in the 1st half about definite share of the whole estate, and that therefore the  $\frac{1}{3}$  of the part had to be valued at the market value under cl. v (d). The word "fractional" in the Notification, and indeed the whole language of it appear to have been taken from the last sentence in the decision. The affinity between the two is tell-tale. It is thus evident that it was in consequence of the decision and in order to rectify the omission in the 2nd half of the clause that the Notification was issued. The Notification thus adds a provision for a definite share of a part corresponding to the provision in the Act itself for a definite share of the whole.

The United Provinces and the Behar and Orissa Governments have after the Devolution Act of 1920 withdrawn the above Notification, and the result is that the above Punjab decision has now become applicable again in those provinces. Hence it was held in the recent decision *Haliman v. Media*, 55 All. 531 referred to above that a suit for possession of a fractional share of a separately assessed part of a temporarily settled Zamindary had to be valued under cl. v (d) at the market value. It may be noted that in this decision also "definite share" and "fractional share" are used as meaning the

same thing. In all the other provinces, the Notification has been re-issued by the respective local Governments.

The result of the Notification read with clauses (α), (β) and (δ) is set out in the judgment in 16 A. 493.

“When the subject-matter of the suit is:—

(1) An entire estate or definite share of an estate, paying revenue to Government or

(2) Part of an estate recorded as separately assessed (so far it simply summarises clauses (α) and (β) of clause v of s. 7) or

(3) a definite share of a part of an estate, which part is separately assessed—(this is by virtue of the Government of India Notification), the court-fee is payable on the value computed at a specified multiple of the annual assessment.

In all other cases (of course only in cases of lands assessed to revenue) the property should be valued at its market-value. Clause (δ).” See detailed commentaries under clause (δ).

Leaving aside the clear cases of the property being an entire estate, and where though it is not an entire estate it is a part thereof though not a definite share and is separately assessed and recorded as such, the other cases are where the property is a definite share of an estate or of a part thereof which is separately assessed with revenue. Both are almost identical cases and the principle is that where that share or fraction is definitely known it is only a matter of arithmetic to compute the value of the share on the ratio of the valuation for the whole property. “But where the suit is not for a fractional part but for distinct plots the fee must be paid on the market value. Where a fractional share is sold, it conveys to the vendee the same fraction in all the plots of that part—whether these plots be good, bad or waste or valueless lands. Where however entire fields or plots are sold, the fields or plots so sold may be the most valuable portion of an estate assessed to revenue and the rest of it may be valueless land. The revenue assessed on such an estate would be assessed chiefly with reference to the valuable portion. To meet cases of this kind, the law lays down that the rules as to payment of fee on five (or more) times the revenue is to be limited to cases where the suit relates to an entire estate or part separately assessed or a fractional share of it”. Per Berkitt, J., in 16 A. 493.

**Definite share.**—This means “an undivided tangible fraction of an estate as distinct from a defined demarcated part which has been carved out of an estate.” (Coutts Trotter, J., in 19 M. L. T. 266).

For computing the value according to clause (α) or (β) it is not necessary that the definite share should also have been separately assessed to revenue. It is only in cases where the share is not definite, such separate assessment is necessary. *Buniah Lal v. Shyan Lal*, 12 C. W. N. 990. The Kunjora Ghatwali is part of an estate paying

revenue to Government but it is not a definite share of such an estate and is not separately assessed to Government revenue, and therefore the court-fee has to be calculated on the market value of the land and not on ten times the revenue payable in respect of it. *Jogendra Narain Singh v. Radha Prosad Singh*, 13 Pat. L. T. 590 = 1932 Pat. 319. See also under 'Fractional Share' below.

**Subordinate tenures.**—Even where it is not the proprietary interest in the whole or a share of the estate that forms the subject matter of the suit, but a subsidiary interest as a subordinate tenure, it is held that clause (a) is the proper clause applicable. Their Lordships observe as follows in *Habibul Hussain v. Mahamad Reza*, 8 C. 892: "If it was the intention of the legislature that where a suit is not brought by the proprietor of an entire estate, but by a subordinate tenure holder, such as mukavaridars etc., there should be a different way of assessing the court-fee, that would have been clearly expressed in one of the clauses of the section. Referring to all the clauses it is evident that there is no separate provision for a suit by a subordinate tenure holder. Therefore it is clear such a case comes within sub-section (a) of clause v of s. 7". This principle was also extended to a share of a subordinate tenure. It was held "immaterial who paid the revenue to Government. The fractional share of the subject-matter (the under tenure) is certainly a definite share of the estate as a whole which pays annual revenue to Government." *Swaminath v. Jang Bahadur*, 58 I. C. 132. But see *Bibi Kulsum v. Muhammad Hamid*, 45 I. C. 928.

**Estate.**—This is defined in the Explanation to the section. This includes the cases where the raiyats pay the amount directly to Government, or to an assignee of such revenue.

**Paying annual revenue to Government.**—This includes payment of assessed revenue not necessarily to the Government direct but also payment to an assignee from Government, such as a Jagirdar.

**Permanently settled estates.**—There are estates in respect of which the revenue payable was settled once and for all. See Bengal Regulation II of 1793 and Madras Regulation XXV of 1802. They generally comprise Zamindaris and go by the several names of Jagirs, Mittas, etc.

**Temporary settlements.**—The majority of lands in the Madras Presidency, where the Ryotwari tenure prevails and also the Sir lands in the United Provinces are all instances of temporarily settled estates. Here the assessment is subject to periodical revision; at present it is revised every 30 years in the Presidency of Madras. During that period it is of course a permanent assessment till the next settlement.

**"Collector's Registers."**—The expression "Collector's Registers" in s. 7 v (b) refer to the register in which the land revenue

is recorded for fiscal purposes and is maintained by the Collector. In different provinces this register is called by different names. In Punjab, Jamabandi must be treated as Collector's Register for purposes of court-fee under this sub-clause. *Munir Ahmed Khan v. Azim Bakhsh*, 37 P. L. R. 41 = 1935 Lah. 331.

### Cases falling under clause V (b).

(1) In a Baiyachara village where the property forming the subject-matter of suit is a definite share of an estate paying revenue to Government, the fee is chargeable under clause (b). *Zaharia v. Gopal*, 3 A. L. J. 511.

(2) In a suit for possession of paddy lands, the plaintiff is entitled to pay court-fee only on five times the land revenue on the paddy fields. *Maung Po Lie v. Bank of Chettinad*, 1934 Rang. 313.

(3) A suit for land classed as ryotwari land at the time of the suit can be valued under cl. (b) and objection cannot be taken that it was wrongly classed as such. The fact that it is registered as inam subsequent to suit would not alter the valuation. *Narayani Ammal v. Secretary of State*, 41 I. C. 167 (Mad.)

**"Paying revenue" and "recorded in the Collector's Register as separately assessed".**—There appears to be a slight distinction in meaning between these two expressions. The estate is mentioned as "paying revenue" while a part of it is not mentioned as paying revenue but is merely "recorded as separately assessed". Possibly, the distinction is that in zamindaries or big extents of land, the zamindar or land-holder, having executed engagements with the Government, pays the revenue of the estate, while parts of them are for convenience or revision of assessment at the time of re-settlement or for other reasons recorded by the Settlement authorities as separately assessed with revenue. Compare *Haliman v. Media*, 55 All. 531 (533, 534). Periodical revision of assessment will be facilitated if the revenue on a zamindary or other vast extent of land is recorded as distributed over the several parts of it because at the time of the revision the revenue cannot be increased or modified at a uniform rate for the whole of such vast land but has necessarily to be increased or modified with reference to the quality of each of the component parts. Of course such periodical revision can take place only in the case of temporarily-settled lands.

### CLAUSE (c).

**Application.**—While the estate contemplated by clauses (a), (b) and (d) from one group, this clause is distinct from them in this. This refers to land which pays (1) no revenue or (2) is partly exempt from such payment or (3) is charged with a fixed payment in lieu of such revenue.

**Revenue free lands.**—This clause applies to lands not paying revenue. They pay either no assessment or are burdened only with a nominal payment. A manyam is land held either at a low assessment or altogether free in consideration of services done to the State or the community. They are of different kinds as Sarvamanyam, Sudda Inam, Ardhmanyam, Chaturbagam, Mukhasa, Dufter inams, Tope inams, Brahmadayam, Agraharam, Srotriyam, Poruppu, Jagir, etc. In these cases it is clear that the assessment could not serve as any safe basis for the valuation of the property. Hence it is that the value is directed to be computed on the annual income thereof. *Maung v. Kumara*, 50 I. C. 5.

**Fluctuating assessment.**—This clause is held applicable to suits for the recovery of possession of lands subject to fluctuating assessment. *Mohan v. Bahadur*, 50 I. C. 142.

### Valuation.

(1) In the cases where there have been profits from the land, and where the computation has to be made under this clause the value of the land is taken to be 15 times the nett profits that have arisen from the lands during the year next before the date of presenting of the plaint. *Gasi Ram v. Har Govida*, 28 A. 411. Calculation of profits which have arisen during the fasli year next before the date of presenting the plaint instead of the calendar year, has been held to be correct. *Chandra Shekhar v. Thakurji Maharaj*, 1935 A. L. J. 548=1935 All. 642.

(2) In cases where no such nett profits have arisen, then the value is the amount at which the court shall estimate the land with reference to the value of similar land in the neighbourhood. The value herein stated cannot be construed to mean "the value of profit." That would result in importing into the natural meaning of the word 'value' a limitation for which there seems to be hardly a necessity. It is submitted that the market-value of the land is what is meant. This will result in no disparity either. In the first clause the valuation is taken to be 15 times the nett annual profits. It is a rough and ready estimate of the value of the land 'at 15 years' purchase'. If that data of annual income is not available, the courts are authorised to estimate the value of the property by reference to the value of the adjacent properties.

'Similar land'—It was held in *Maung Meik v. U. Kumara*, 60 I. C. 5, that the mere fact that the land is "religious land" does not render it incapable of valuation with reference to the value of similar land in the neighbourhood. The word "similar" has no reference to the ownership of the lands but only to the intrinsic value of the land.

(3) A question of some nicety would arise where a land is partly cultivated in which case the income should be taken in the case of the cultivated part and the market-value in respect of the balance.



(4) Where the plaintiff paid the court-fee on the market-value of the property and the defendant appealed but paid court-fee on 15 times the nett profits, it was held that the defendant was not estopped from valuing the appeal correctly simply because he did not object to the valuation of the plaintiff in the suit. *Bhagwan Puri v. Secretary of State*, 40 A. 398=100 I. C. 35=1927 All. 308.

**Suit to recover lands in which there are wells.**—The valuation for the purposes of court-fees should be based on the value of the lands alone and the wells should not be separately valued. See the Civil Rules of Practice and Circular Orders at Madras Vol. I, page 177.

#### CLAUSE (d).

#### Clauses (a), (b), (c) and (d) compared.

Clause (d) relates to the case where the land is

(1) part of an estate paying revenue to Government,

(2) but is not a definite share thereof and

(3) is not separately assessed. In the explanation to the section the word 'estate' has been defined to mean 'any land subject to the payment of revenue, etc.' Clauses (a) and (b) refer to 'estates' paying revenue to Government and clause (c) refers to land wholly or partially exempt from such payment. This clause supplements clauses (a) and (b), which relate to lands which are either entire estates or are definite shares thereof or are separately assessed parts thereof.

**Valuation of specific plots in an estate—Fractional share.**—The present clause refers to such portions of revenue-paying estates that do not fulfil the actual requirements specified in clauses (a) and (b). Where the property is not a definite share of a revenue-paying estate and is not separately assessed and such distinct plots of land are sought to be recovered the value of the same must be the market-value of the property, 16 A. 493; *Chandan v. Bishen Singh*, 33 A. 630; *Mangamma v. Sundaramma*, 33 I. C. 683; *Ma Sha Ma v. Somasundaram Chetti*, 75 I. C. 217=1923 Rang. 246. Ghatwali tenures in the Birbhum District are revenue-paying estates. Where a suit was brought for the recovery of possession of five out of several Ghatwali tenures of which the total Sadarjana was divided between Government and the zemindars, and where consequently there was no separate assessment for the items claimed, it was contended that to enforce the collection on market-value would make the valuation under clause (d) of these 5 items larger than the valuation for a suit for the recovery of all the items and hence improper. But that contention was not approved and it was held that the valuation should be according to the market-value under cl. (d) and that the suit did not come either under cl. (a) or cl. (b). *Chandra Narayan v. Ashutosh*, 41 Cal. 812=23 I. C. 89.

Suit by a ryot against another for possession of land forming part of a permanently settled zamindary land falls under clause (d). *Kandaswami v. Subbai*, 77 I. C. 781=46 M. L. J. 345=1924 Mad. 646. But the decision to the contrary by a Bench of the Madras High Court (Ramesam and Cornish, JJ.) in *Subramania Ayyar v. Rama Ayyar*, 1927 Mad. 1002 calls for some comment here.

It was there held the notification regarding fractional share referred to *supra* applied to a suit for some specific plots in certain *ryotwari* (temporarily-settled) survey numbers, that the plots were fractional shares, and that therefore the suit need not be valued under cl. v (d) at the market value but need be valued only on the revenue proportionate to the area of the plots. All the above decisions were dissented from as having been vitiated by the fact that they did not consider the notification and being therefore of no value.

The suit related to several items which were not separately assessed to revenue. They were all portions of survey numbers which were assessed with revenue. It was contended that the plaintiff should pay court-fee on the market-value and not on the proportionate part of five times the assessment of the whole survey number. The plaintiff relied on Notification No. 4650 dated the 10th September 1889 of the Government of India. Regarding the question their Lordships observed as follows: "The Government of India Notification has now been superseded and re-enacted by Notification No. 358 dated the 10th September 1921. Under this notification "When a *part* of an estate paying annual revenue to the Government under a settlement which is not permanent, is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter of a suit for the possession of a *fractional* share of that part shall for the purposes of the computation of the amount of the fee chargeable in the suit be deemed not to exceed five times such portion of the revenue." This notification was the subject of consideration in *Reference under the Court-Fees Act of 1870*, s. 5, 16 All. 493, which was a decision of a single judge. It was there held that a *fractional share* under this notification covers only a case where the plaintiff claims a certain fraction of a survey number but not where he claims a certain definite area, within the survey number; for instance if the plaintiff claims  $\frac{1}{2}$  or  $\frac{1}{3}$  or  $\frac{1}{4}$  share assessed with revenue, the notification applies, but where he claims 3 acres 70 cents out of a survey number whose extent is 7 acres and 30 cents, the notification does not apply though 3 acres 70 cents is  $\frac{37}{73}$  of 7 acres 30 cents". Their lordships then refer to the judgment of Coutts-Trotter, J., in *Godavarthy Sundaramma v. Mangamma*, 47 I.C.543=34 M.L.J.558, where the learned Judge agreeing with the view of Burkitt, J., in the Allahabad decision (16 A. 493) regretted the conclusion which resulted in an anomaly. That decision of Coutts-Trotter, J., is explained away on the ground that the Notification above referred to was perhaps not considered by the learned Judge. The

judgment of Krishnan, J., as regards permanently settled land in *Kandaswami v. Subbai Goundan*, 46 M. L. J. 345, is then referred to and dissented from, as it has ignored the Notification. (This reference to the judgment of Krishnan, J., is apparently a mistake as that judgment related to permanently settled land and therefore there was no necessity to consider the Notification, which applies only to temporarily settled land.) Their Lordships observe: "The point next came before Krishnan, J., in *Kandaswami v. Subbai Goundan*, 1924 Mad. 646. He followed the earlier views and referred to two unreported decisions in Madras, Second Appeals 886 of 1917 and 711 of 1915. I do not think that S. A. No. 711 of 1915 is of any value as a decision on the question now under consideration and in S. A. 886 of 1917 it does not appear that the notification was cited before the learned judges or that they considered it. The view in 16 A. 493 was followed in *Chandan v. Bishan Singh*, 33 A. 630 = 11 I. C. 816, by Tudball, J. Even the judgment of Krishnan, J., does not show that he considered the notification. If he has considered only the Court-Fees Act and not the notification his decision is of no value either. The notification is one purporting to remit the court-fees and it was intended to give some relief to the subjects against the anomalous fees leviable under the Act itself. *In so far as all these decisions lay down that under the Act itself a plaintiff suing for the possession of a part of a survey number should pay court-fees on the market-value I agree with them. But the object of the notification is to give relief from the anomalous position and where the notification has not been considered the decisions are of no value.* It is noticeable that the Act uses the words "definite share" and while making provision for a definite share of a part of an estate, it did not make any provision for a part of a separately assessed survey number. The notification did not use the words "definite share" but used the words "fractional share." If the words "fractional share" can cover any kind of fraction, (simple as  $\frac{1}{2}$ ,  $\frac{1}{3}$  etc., or complicated as  $\frac{19}{48}$  or  $\frac{37}{72}$ ) the only question is "Does it make any difference when a plaintiff mentions an area which can be worked out as a fraction of the whole but does not mention it by describing it as a fraction?" In my opinion it does not. The opposite conclusion can easily be evaded by a clever plaintiff describing the plot he claims not as so many acres and cents but as the north-western  $\frac{37}{73}$  of such and such survey number. I do not think that liability to pay court-fee should depend upon the ability to evade or not. The Court-Fees Act is a fiscal enactment and ought to be liberally construed. The anomaly is recognised by Coutts-Trotter, J. If by a fairly reasonable construction we can avoid the anomaly I think one ought to do so. The words "fractional share" cover both a definite fraction, and also indefinite fraction, whereas the learned judges who considered the matter seem to limit the words to an indefinite fraction. They think that the notification applies to an unspecified  $\frac{1}{2}$  or  $\frac{1}{4}$  but not to a definite  $\frac{1}{2}$  or  $\frac{1}{4}$ . I do not see any reason why the words "fractional share" should be so limited. Tudball, J., seems to think that a *specific*

*share* is not covered by "fractional share" and that there is some difference between a specific *share* and a definite share. I am unable to agree with Burkitt, J., and Tudball, J., in the Allahabad cases."

This decision is quoted at length for it runs counter to the previous judgments of that court and that of the Allahabad and other High Courts and deals with quite a common type of suits. It is therefore expedient to examine the grounds on which the learned judges chose to come to a different conclusion. Their Lordships dissent from the previous decisions on the ground that these ignored the Notification:

"The decisions in which the notification has not been considered are of no value." Admittedly the notification (Government of India Notification whose wording is the same) was considered in 16 A. 493, which decision was considered and approved by Coutts Trotter, J., in 8 L. W. 88 = 34 M. L. J. 558. There was no necessity for Krishnan, J., in 1924 Mad. 646 where the suit was for recovery of possession of specific plots in a permanently settled land, to refer to this notification. His Lordship there referred to these decisions about temporarily settled land only to show that specific plots whether in permanently settled land or temporarily settled land have to be valued under cl. (d), according to the market-value. So far about Madras. In Allahabad, the decision in 16 A. 493 was referred to and approved in 33 A. 630 by Tudball, J. Though it may be in some of the decisions there is no specific reference to the notification still as the decision in 16 A. 493 was referred to and followed, and as that decision in 16 A. 493 is one which has discussed the notification it can be safely presumed that the learned judges who were parties to these several decisions were aware of and did consider the notification.

There was, however, no necessity for the application of the notification in them, because according to them specific plots in a property are not definite or fractional shares of it and cl. v (d) of the Act itself therefore applied. According to them the notification is meant for a different purpose as stated in the paragraph headed *Notification—origin of, supra*.

It is submitted that there is a fundamental mistake in the decision and that is that there is a confusion about "specific plot" and "definite share." According to it, both expressions mean the same thing. But all the other decisions take them to mean different things and lay down that a specific plot in a property cannot be said to be any definite *share* of the property merely by comparing the area of the plot with the whole area of the property, because there are other factors such as fertility, etc., besides mere area which have to be taken into consideration in deciding what share or fraction the plot is of the property. Coutts Trotter, J., says in 34 M. L. J. 558: "It is urged that even if a plot is not a part of an estate separately assessed with revenue, nevertheless it may be regarded as a definite share of an estate. It entirely ignores the word 'definite' because every share in an estate is in some sense a definite share, and I have no doubt that what

is meant by the words 'definite share' is an undivided tangible fraction of an estate as distinct from a defined demarcated plot which has been carved out of an estate. Suppose I sell Bromsfield plot out of Whiteacre estates, that would be in my opinion not a definite share of an estate within the meaning of the enactment. But if I sell a fraction of my Blackacre estate and it has got to be divided up among different kinds of land, that is a definite share of an estate."

The decision recognises just like the other decisions that the notification was intended to fill up the lacuna in the second half of cl. v (b) as regards "definite share" of a separately assessed part. It says: "It is noticeable that the Act uses the word 'definite share' and while making provision for a definite share or a part of an estate, it did not make any provision for a part of a separately assessed survey number." But unlike those decisions, which hold that "definite share" means an undivided fraction such as a  $\frac{1}{2}$  or  $\frac{2}{3}$  or  $\frac{3}{4}$ , it says "definite share" means a specific demarcated plot, that "fractional share" in the Notification is wide enough in meaning to include not only a "definite share," *i. e.*, according to the meaning given by it to that expression, a specific plot (which can be made into a fraction by putting its area as numerator and that of the whole land of which it is a part as denominator of the fraction and which thus would be a "definite" fractional share or a "fractional share with defined boundaries" as the decision calls it) but also, in the language of the decision, an "indefinite share" or "indefinite fractional share" or, as the decision would more pointedly call it, "a fractional share without defined boundaries" such as "an unspecified  $\frac{1}{2}$  or  $\frac{1}{4}$ ." A fraction is said to embrace both a definite fraction (definite share) and an indefinite fraction (indefinite share) or, in other words, both a specific demarcated plot and an undivided unspecified fraction. The conclusion is thus arrived at that a specific plot is a fractional share according to the notification and can be valued on the revenue proportionate to its area. It says that if the notification is not thus interpreted, a suit for a specific plot in a land will have to be valued at the market value which would be far greater than the value of a suit for the whole land which is calculated only on its revenue, and that this would be an anomaly. But though it thus purports to avoid one anomaly, it creates other difficulties:

(i) While the notification as thus interpreted provides for both indefinite fraction and definite fraction, *i. e.*, for both undivided fraction and specific plot (definite share) of an assessed part of an estate and thus fills up the second part of cl. v (b), it creates a gap in the first and main part of it inasmuch as there would be then no provision there for an "indefinite" share like an undivided  $\frac{1}{2}$ ,  $\frac{2}{3}$ , etc., of the whole estate. The result is that suits for such indefinite shares of the whole estate have to be valued at the market value under cl. (d). This market value would ordinarily be far greater than the value of the whole estate at 5 or 10 times the revenue. That is, a suit for an unspecified  $\frac{1}{2}$  or  $\frac{2}{3}$  of the estate has to be valued at a far higher amount than a suit for the whole estate itself. Indeed, when it is

conceded that the notification was intended to make a similar provision in the second half of cl. (b) about definite share of a part corresponding to the provision in its first part about "definite share" of the whole, logic would require that the expressions used in the notification would be fitting to the occasion and mean just the thing intended and not anything wider or narrower. But according to the interpretation 'fractional share' in the notification is wider in meaning than 'definite share' in the Act. This is unnatural, and as stated above, gives rise to a great anomaly. No explanation has been given in the decision for this difference in meaning between the two expressions. The logical and natural conclusion in the circumstances can only be that the two expressions mean the same thing.

(ii) The decision affects cl. v (a) also about permanently settled land. As definite share is made to mean a specific plot, it comes about that there is no provision in cl. v. (a) for an "indefinite share" (i.e., "indefinite" according to the meaning given to the expression by the decision), that is to say, for an undivided share like  $\frac{1}{2}$ ,  $\frac{3}{4}$ , etc., of permanently settled estates. This would mean that suits for such shares of permanently settled estates which are generally big and extensive estates like Zamindaries have to be valued not on the proportionate revenue but under cl. (d) at the market-value which could never be contended to be the proper basis of valuation.

(iii) As a specific plot in a part of an estate is necessarily also a specific plot in the whole estate, it is a "definite share" (specific plot) of the whole. Now the first portion itself of cl. (b) provides for a definite share of the whole, and it therefore comes about that there was no necessity for the issue of a special notification for the purpose. Thus starting from the proposition that "specific plot" and "definite share" are synonymous and that the notification was issued to fill up the lacuna in cl. (b) as regards the valuation of a specific plot in a part of the estate, then there is no necessity for the notification.

(iv) There is difficulty in the practical application of the decision. The decision says that a specific plot in a property can always be expressed in terms of a fraction of it. This is not correct. A specific demarcated plot, say, of 1 acre in a land of 3 acres is not always equivalent to  $\frac{1}{3}$  of the land. There are other considerations besides mere area which go to determine what fraction the plot is of the whole land. The plot may be near a river or irrigation channel and therefore be the most fertile and valuable portion, and the rest of it may be valueless part, and the revenue assessed on such land would be assessed chiefly with reference to the valuable portion, in which case the plot would be far more than  $\frac{1}{3}$  of the land. Or the plot may be sandy or shady or rocky and therefore the least fertile and the most valueless portion of the land, in which case it will not be equal to but would be far less than  $\frac{1}{3}$  of the land. The assumption that every part of the land would be equally fertile and valuable is not correct. It cannot therefore be predicated what fraction the plot is of the whole

by merely putting its area as numerator and that of the whole land as denominator of a fraction. See 16 All. 493 (495) and 33 All. 630 (634). It is only if the plaintiff states unreservedly that his suit is for  $\frac{1}{3}$  of the land, without locating and specifying the boundaries of the portion sued for, that he will be entitled to  $\frac{1}{3}$  in each and every inch of the land. But if he locates the plot and specifies its boundaries it cannot be said that he is suing for  $\frac{1}{3}$  of the land. The revenue assessable on the plot may not be equal to  $\frac{1}{3}$  of the revenue assessed on the whole land. In the decision under reference his Lordship (Ramesam, J.), after stating that there is no difference between a claim, say, for 3 acres, 70 cents in an estate of 7 acres 30 cents and a claim for  $\frac{37}{78}$  of the estate, observes: "The opposite conclusion can easily be evaded by a clever plaintiff describing the plot he claims not as so many acres and cents but as the north-western  $\frac{37}{78}$  of such and such survey number. I do not think that liability to court-fee should depend upon the ability to evade or not." With due deference it is submitted that a plaintiff would never be allowed to claim a plot in the north-west or south-east or in any other specific locality in the estate and value it on the proportionate revenue, but will have to value at the market value, because 3 acres 70 cents in the north-west may not be equal to 3 acres 70 cents on the south-east or to  $\frac{37}{78}$  of the estate. If the plaintiff simply asks for 3 acres 70 cents and stops there and does not locate it, his claim may be for  $\frac{37}{78}$  of the whole estate including both its good and bad parts and he may value the fraction on the proportionate revenue. But if he specifies the plot claimed and says it is in the north-west or south-east, the area cannot be reduced to a correct fraction even if he expresses it in the form of a fraction as  $\frac{37}{78}$  or so forth.

(v) Further, a fundamental misconception appears to underlie the application of the notification to the land in question in the decision. The suit related to certain specific plots in some survey numbers (ryotwari or temporarily-settled.) The wording of the notification makes it applicable only to a fractional share of a *part* (recorded in the Collector's Register as separately assessed) of an estate. It does not apply to a fractional share of an estate itself, but only to a fractional share of a part of it. It cannot therefore apply to a specific plot (even supposing it to be a fractional share) in ryotwari survey number in Madras, because in the Presidency of Madras a ryotwari survey number is an estate within the meaning of the explanation to cl. v. *Vide* commentary on the explanation in paragraph headed *Principles of Valuation, supra*. A ryotwari survey number in Madras whether it was originally an estate or was part of it and was subsequently assessed is an estate. There is no engagement executed to the Government by any owner or holder of ryotwari land in Madras as regards revenue. (Such engagements are executed only as regards Zamindaries or big estates containing vast extent of land, but all zamindaries in Madras are permanently settled, though in

Northern India there are temporarily settled zamindaries.) The second part of the explanation says that "in the absence of such agreement" any land separately assessed is an estate. Hence, there being no such engagement about ordinary ryotwari land in Madras any such land or part of it separately assessed is an estate. In Madras therefore there is no such thing as a *part* (of ryotwari land) which is separately assessed and which is not an estate. When any part of a ryotwari land is separately assessed there is no engagement executed, but patta is issued for the part and the pattadar pays revenue to the Government, and the part becomes an estate.

The decision applies the notification to specific plot (definite fractional share according to it) in a survey number, but it does not indicate of what estate this survey number is a part. The existence of the explanation seems to have been overlooked by it, though it says that the previous decisions have ignored the notification. In other provinces, though a part of a temporarily settled zamindary may be recorded as separately assessed, it cannot become an estate according to the explanation, because there is an agreement executed by the zamindar as regards the payment of the revenue of the zamindary. It would appear that the revenue payable for these temporarily-settled zamindaries is distributed by the settlement officer over its component parts (thoks, pattis, or khewat khatas as they are called there) and each part recorded in the Register as separately assessed. In the United Provinces this is regulated by s. 67-A of the U. P. Land Revenue Act and Board's Circular. See *Haliman v. Media*, 55 All. 531. This distribution and separate recording of assessment over each part is done probably to facilitate revision of assessment at the time of the periodical re-settlement. In Madras as soon as a part of a ryotwari or temporarily settled land is assessed with revenue, it becomes an estate by itself and the provision in the second part of cl. v (b) for the valuation of separately assessed part of an estate appears to be redundant in the light of the explanation, as the provision in its first part for the valuation of an estate will cover such a case also. The second part of cl. v (b) and the notification can therefore, it is submitted, apply only in provinces where there are temporarily settled zamindaries. In the Punjab and in the United Provinces and possibly also in some other Provinces in the north there are such zamindaries. The history of the notification also shows that it arose from the Punjab decisions. It is not a violent presumption to hold that the notification has been simply re-issued in Madras after the Devolution Act and has no practical significance there.

Even if the notification should be thought to apply to conditions in the Madras Presidency, its interpretation in the decision conflicts with the earlier Madras rulings and with the rulings earlier and later of all the other High Courts and cannot be sustained. The interpretation of "fractional share" in the notification as wider in meaning than "definite share" in the Act, so as to include what is called an "indefinite fractional share" as well as a definite fractional share, and of



"definite share" as meaning a specific demarcated plot is found to create a host of difficulties and anomalies. All the other decisions take "fractional share" in the notification and "definite share" in the Act to mean the same thing, and this view coincides with the history of the notification as set forth above. A fraction of a certain definite quantity is always a definite quantity. There cannot be any indefiniteness about it. An "indefinite fraction" in the circumstances is a contradiction in terms. On the other hand, a specific demarcated plot in an estate, cannot be said to be a definite share of it. It cannot be predicated with certainty what share the plot is of it. It is submitted that for these reasons it is doubtful whether the observation in the decision that it is "fairly a reasonable construction" avoiding anomaly and that it is not doing "any violence to the English language" to say that the words 'fractional share' "cover both definite and indefinite fractional shares" is correct. The decision says that it avoids the anomaly of valuing a specific plot in an estate at a higher figure than the estate itself. But in trying to avoid one difficulty it has created other difficulties. It is submitted that even a fiscal enactment has to be construed as it is, and however inequitable may be its provisions they will have to be given effect to as they are. A taxing statute should be no doubt interpreted strictly and precisely so as not to impose an unnecessarily heavy burden on the subject. But a strict interpretation does not always mean a liberal interpretation which fails to tackle an obviously difficult or obscure expression or term in the statute or interprets it so as to relieve against hardship in a particular case. The result of any deviation from the strict interpretation may well be a hardship to the subject, because the liberal interpretation given to a term or expression in the particular circumstances of a case may turn out to be an illiberal interpretation of it and bear hard on the subject many times more heavily in the circumstances of another case. And certainly the same term or expression cannot be construed differently in different cases so as to be liberal in all of them. We have seen how the attempt to give a so-called liberal interpretation to the terms "definite share" and "fractional shares" in the decision under reference in order to avoid one anomaly has been productive of infinitely greater anomalies and hardships. The observations of Lord Russel of Killowen, C. J., in *Attorney General v. Carlton Bank*, (1899) 2 Q. B. Dn. 158 (164) are pertinent here. It is not that the anomaly referred to in the decision was not noticed in the previous decisions. But there was no escape from it as the statute had to be given effect to as it is. Coutts Trotter, J., observes in *Sundaramma v. Mangamma*, 34 M. L. J. 558=8 L. W. 88 "It leads no doubt to this absurdity. For instance you may have a case where if you sue for the recovery of the whole plot, if it falls under paragraph v (b), taking 5 times the revenue would result in a lower value than if you sue for the portion of the land which has to be taken at the market-value. I am conscious of the extreme inconveni-

ence of the decision but I see no possible escape from that construction of the Act. I observe the same view was taken by the learned judges of the Allahabad High Court in 16 A. 493." So also in *Chandra Narayan Singh v. Asutosh De*, 41 Cal. 812 (817). "It has been ingeniously argued, however, on behalf of the plaintiff, that he should not be called upon to pay a larger amount as court-fee than what he would have had to pay if he had been the owner of all the fifty-two ghatwali mahals and sued to recover possession thereof. This contention is manifestly fallacious for two reasons, namely, *first*, that the plaintiff cannot avail himself of sub-clause (a) unless he brings his case strictly within its terms, and for that purpose the determining factor is the land in suit and not a larger property in which it may be included; and *secondly*, that even if the plaintiff had sued for recovery of all the fifty-two ghatwali mahals, the question would require careful examination whether those mahals constitute an estate paying annual revenue to Government. The contention of the plaintiff consequently fails. As regards sub-clause (b), it is plainly inapplicable for the reasons assigned for the exclusion of sub-clause (a)."

In the recent decisions *Rajwant Singh v. Mutalli*, 1930 Lah. 182 and *Jogendra Narayan Singh v. Radha Prasad Singh*, 1932 Pat. 319 it has been held that suits for specific plots must be valued under cl. (d), and in *Salamat Ali v. Nur Mahomed Khan*, 1933 Oudh 533 the learned judges have dissented from the 1927 Madras decision and preferred to follow the above Allahabad decisions.

**Market Value.**—In estimating the market value of certain ryoti land, which under the Estates Land Act, could not be converted into a building site without the consent of the landlord, the court cannot proceed to determine its value as a building site on the hypothetical assumption that the landlord would on payment of some *nasaar* be willing to allow it to be so used. *Alagappa Chetty v. Saminathan Chetty*, 142 I. C. 195 = 1933 Mad. 367.

### **Proviso.**

**1. Madras.**—The proviso is enacted by the Madras Court-Fees Act V of 1922 in substitution for the proviso in the Act which relates of the Bombay Presidency. Section 8 of the Suits Valuation Act provides that the valuation for the purposes of the computation of court-fees and jurisdiction should be the same except in specified cases and the suits covered by s. 7 (v) are amongst the excepted cases. The valuation of land is provided for in para (v) in several ways. It is a multiple of the revenue payable to Government or the nett profits arising out of the land or the market-value thereof. In the cases of lands and gardens it is only the market-value. Provision is made in s. 3 of the Suits Valuation Act enabling the Local Government to frame rules for the valuation for jurisdiction of those classes of suits which have been excepted in s. 8 of the Act. Under s. 3, therefore the Local Government could make rules for the computation of the value of the land for the purposes of jurisdiction. Section 14 of the Madras Civil Courts

Act (III of 1873) lays down that "when the subject-matter of any suit or proceeding is land, a house or garden, its value shall for the purposes of the jurisdiction conferred by this Act be fixed in the manner provided by the Court-Fees Act, 1870, s. 7, clause v". And s. 6, of the Suits Valuation Act provides that "on and from the date on which rules under s. 3 of the Suits Valuation Act take effect, in any part of the territories under the administration of the Governor of Fort Saint George in Council to which the Madras Civil Courts Act extends, s. 14 of that Act shall be repealed as regards that part of those territories". No rules have been so far framed by the Government of Madras under s. 3 of the Suits Valuation Act. Consequently s. 14 of the Madras Civil Courts Act continues to be in force. The result is that in the case of suits covered by s. 7 paragraph v of the Court-Fees Act, the value for jurisdiction is the same as the value computed under that section for court-fee. The effect of it is that though by virtue of s. 8 of the Suits Valuation Act, suits under s. 7 (v) are excepted from the operation of the rule laying down that the valuation for jurisdiction and court-fees should be the same, still by the combined operation of ss. 3 and 6 of the Suits Valuation Act and s. 14 of the Madras Civil Courts Act, the exception in the case of suits falling under s. 7 (v) is neutralised. The present proviso grafted into the section by the Madras amendment is to the effect that if rules are framed by the Local Government under s. 3 of the Suits Valuation Act, for determining the jurisdiction value, that value is to govern the valuation for court-fees also. At present the converse is the case, the valuation for court-fees governs the valuation for jurisdiction (s. 14 of the Madras Civil Courts Act). It may also be noticed that while s. 3 empowers the Local Government to frame rules for all suits under clause (v) as suits for lands, houses, gardens etc. and s. 14 of the Madras Civil Courts Act also refers to all such kinds of subject-matter, the Madras Proviso refers only to 'land' and the proviso is put under clause v (d) and precedes clause v (e) which relates to suits where the subject-matter is a house or garden. Consequently even if and when the Government of Madras frames rules under s. 3 of the Suits Valuation Act for suits relating not only to land but also to 'houses and gardens' this proviso laying down that the value for jurisdiction will be the value for court-fee is inapplicable to the class of suits falling under paragraph v (e), *viz.* suits for houses and gardens, and clause v (e) states it is the market value. If the Madras Government by framing rules under s. 3 of the Suits Valuation Act, directs another method of computation of value of such suits for jurisdiction, then by virtue of s. 6 of the Suits Valuation Act, s. 14 of the Madras Civil Courts Act is repealed and s. 8 of the Suits Valuation Act being inapplicable, there will arise a difference in the valuation for the two purposes, *viz.*, court fees and jurisdiction unless the proviso is amended by including 'houses and gardens' along with 'land' and the proviso, removed from its present setting and put under clause (e).

**2. Bombay.**—While the Madras Proviso enacts that the valuation fixed for purposes of jurisdiction is to govern the value for court-fees also, the proviso relating to Bombay directly fixes the court-fee. Of course s. 7 clause (v) being one of the excepted cases under s. 8 of the Suits Valuation Act, the value for court-fees and jurisdiction under this proviso in Bombay could not be the same. It covers all classes of Revenue paying lands in the Bombay Presidency. Land may be held on (I) (a) permanent settlement, (b) settlement for any period exceeding 30 years and (c) settlement for any period not exceeding 30 years and full assessment is paid to Government or (II) (d) where a part of the annual survey assessment may have been remitted.

In cases (a) and (b) the value of the land is fixed at 15 times the survey assessment. In case (c) the value is fixed at  $7\frac{1}{2}$  times the survey assessment. In case (d) the value is computed under (a), (b) and (c) as the case may be irrespective of the whole or part remission and to it is added a sum equal to 15 times the assessment or the portion of the assessment so remitted.

**Scope.**—The scope of this proviso has been admirably discussed by West, J., in *Ala Chela v. Oghadbai*, 11 Bom. 541 F.B. His lordship rightly comments on the "so called" proviso "improperly called" as such. The reason is that while this proviso is added as an appendage to clause (d) of paragraph (v) of s. 7, it is really much more comprehensive than the limited scope of clause (d) to which it refers: "It seems clear that it was intended to provide a standard of valuation in the Bombay Presidency not only for the comparatively rare cases of land forming part but not a definite share of an estate paying revenue to Government but for all cases of suit for land. It provides rules for all the cases enumerated in the preceding clauses (a), (b) and (c) of paragraph (v) of s. 7 and is manifestly intended to cover all the cases based on the particular circumstances of the Bombay Presidency".

**Proviso—Paragraph 3.**—There is an obvious lacuna in the drafting of the proviso for no provision is made for the possible case of "lands in the Bomby Presidency that have not been submitted in any way to survey assessment. Because the survey extended over almost all the area, it has been assumed to extend over the whole of it." That this was an unwarranted assumption was demonstrated in the above quoted Full Bench decision of the Bombay High Court 11 B. 541. It was observed that this assumption must create a difficulty wherever there has in fact been no survey and no assessment but that it need not create a difficulty where there has been a survey and assessment even though the amount computed under this process as the rate or amount theoretically leviable as land revenue be not in fact exacted by the Government. The primary sense of assessment is the imposition on the land of such and such a tax; its second intention is the tax itself and then there is in the section a transition from the one sense to the other. Where the proprietor of the Talukdhari village had agreed

with Government to pay for a specified period an annual jama'of graduated assessment instead of the survey assessment and a question arose as to how the land is to be valued under those circumstances their Lordships had to strain the language of paragraph 3 of the proviso and hold that "the theory being that all land is primarily liable to be rated or taxed for the public revenue, any sum not levied according to the appraisal made in order to show the proper amount of the land tax may be regarded as a remission under paragraph 3 of the proviso."

### CLAUSE (e).

**Scope.**—This relates to the valuation of a house or garden. The valuation for suits for recovery of possession thereof is according to the market-value of the subject-matter.

**Garden.**—The word commonly refers to a piece of ground on which flowers, etc., are cultivated (Chamber's Dictionary). It has not been defined in the Act. It was held in *Andathodan v. Pallamboth*, 12 M. 301 F. B., that the word 'garden' being used in the clause in juxtaposition with the house, the word is used in the sense of ornamental or pleasure or vegetable garden attached to house. In ascertaining the value of a piece of land on which cocoanut trees have been planted, the question whether it came under clause (c) or (e) is a question of fact to be determined on the evidence as to whether having regard to the portion of the land and the number of trees thereon, the plot of land can be said to be garden. *Kullappa Gounden v. Abdul Rahim Sahib*, 40 M. 824 = 39 I. C. 254 = 5 L. W. 270.

The fact that the land is assessed to revenue does not make a land any the less a garden if it otherwise satisfies the requirements thereof by being an ornamental or pleasure garden. *Sridhar v. Amar Nath*, 34 P. W. R. 1908. Assessment is not the criterion in determining the question whether a land is garden land or not. *Abdul Rahim Sahib v. Kullappa Gounden*, 30 I.C. 845. The word garden is used in a technical sense and does not however mean a 'tope' (Tamil) or 'grove' where there are a muster of trees and the trees are planted and tended as a kind of cultivation. A suit to recover such land is governed by sub-clause (b) and not (d). Assessable land held on patta presumably for agricultural purposes does not become a garden by reason of the fact that cocoanut trees are grown there. *Kullappa Gaunden v. Addul Rahim Sahib*, 40 M. 824. In *Behari Lal v. J. Ngnd Lal*, 2 Lah. L. J. p. 362, where the suit was one for possession by pre-emption of a certain property, the plaintiff described it as land assessed to revenue and paid the court-fees on it at 10 times the revenue. The vendee contested the suit and claimed that he had purchased a garden. Their Lordships held the property was described as a garden in the sale deed and held the fee was payable on the market-value. Referring to the 40 Madras case, their Lordships observe. "The case before the Madras High Court related to a cocoanut tope

and it was held that the conversion of an assessed arable field into a cocoanut tope did not affect the application of clause v (b) of s. 7. On the other hand in a case reported in 146 P. R. 1908, it was held that the term 'garden' in s. 7 v (e) included a fruit garden, even though the land under it might have been assessed to land revenue and that the value should be assessed at the market value. 71 P. R. 1914 is another decision of a Division Bench that puts forth the same view."

**Paramba Land in Malabar District.**—The case of parambas in the Malabar District falls both ways. If the trees are assessed to tax then the land is treated as a garden but if they are not assessed then the land is assessed under clause (c). *Andathodanv. Pullamboth*, 12 M. 301 F. B. The nature of paramba lands in the Malabar district was discussed in this case where it was observed as follows: "If a Paramba contains no cocoanut, areca, or jack trees no assessment is charged. In fact in Malabar a tree tax is substituted for the land assessment and whether or not a paramba is assessed depends upon the nature of the trees grown therein. It is therefore evident that paramba should either be classed as lands paying no revenue or as gardens. The fee is to be computed under clause (c) or (e) according to the circumstances of each case." See also *Kunappa v. Abdul Rahim*, 40 M. 824, where the meaning of word 'garden' was considered. In that case one of the survey numbers was described as a "cocoanut tope." There were number of cocoanut trees growing close together, and the defendants contended that such field or fields must be regarded as constituting a garden within the meaning of clause v (e). Their Lordships observed thus "We do not know over how many fields the 'tope' extended or how thickly together they grew. I do not consider such information necessary to a decision, and may remark that it would be most inconvenient to make the proper principle of valuation of a suit for purposes of jurisdiction dependent on such an uncertain factor as the comparative density of the trees \* \* \* As pointed out by a Full Bench of this court in *Andathodan Moidin v. Pullamboth Mamaly*, there is much significance in the juxtaposition of the words "house or garden" in the clause; and it should be taken as referring primarily to a garden in the English sense, viz., ornamental or pleasure or vegetable. If a holder of a land raised a crop of paddy or ragi there can be no question that it would be valued under clause v (b) of the Act. Does the fact that cocoanut trees are raised instead make any difference?" The decisions in *Venkayya v. Ramaswami*, 22 M. 39 and *Murugesu Chetti v. Chinnathambi*, 24 M. 421, were quoted with approval. It may be noted that now paramba lands are assessed to revenue.

**Garden and houses.**—A suit for possession of a piece of land covered by a garden with two houses must for the purposes of court-fee be valued according to the market-value even though it is assessed to a Government jama. *Must. Bhag Bhair v. Javahir Singh*, 25 C. 545.

Similarly also in the case of a garden with houses and trees, though the land was assessed to revenue, it was held that the property should be valued at its market-value. *Behari Lal v. Nand Lal*, 2 Lah.L.J. 362.

**Market-value.**—It is the value that the property will fetch in open market under the state of things existing at the time the value is sought to be assessed. *Rajagopala Naidu v. Ramasubramania Iyer*, 46 M. 782 = 45 M. L. J. 27+ = 7+ I. C. 180; *Manmatha Nath v. The Secretary of State*, 25 C. 194.

**Temple.**—In *Rajagopala v. Rama Subramani*, 18 L. W. 326 = 1924 Mad. 19, an interesting question arose as to how a temple should be valued. It is certainly not a house though a temple is commonly referred to as the God's home. It was held that a temple has no market value and suits for recovery of possession of same comes under Art. 17 of Schedule II. See also *Parsottamanand Giri v. Mayanand Giri*, 1932 A. L. J. 777 = 1932 All. 593.

**Buildings.**—In suits for recovery of site without the buildings and after their demolition, the value is the value of the site and not that of the buildings. *Namasivaya v. Subramania*, 24 M. L. J. 37.

But where the site is sought to be recovered along with the buildings, then the buildings must necessarily also be valued. *Nihal Chand v. Uday Ram*, 1886 A. W. N. 106. It depends on the facts of each case as to how far an open land is to be taken as an adjunct to a building and valued as a whole, and in what cases the land is to be valued separately. This will assume importance when the land is assessed to revenue as it now is the case with paramba land in Malabar, when the question for determination will be whether the value should be computed on the market value or as a multiple of the assessment.

**House.**—All the amenities which are necessary for the beneficial enjoyment of a house, can be spoken of as being part of the house itself. *Mahomed Tahar v. Pia Bux*, 130 I. C. 550 = 1931 Sind 6.

**Trees.**—Trees standing on specific itmes of land claimed need not be separately valued. *Subramania Ayyar v. Rama Ayyar*, 54 M. L. J. 67 = 27 L. W. 489.

**Bengal amendment.**—As might have been noticed from the commentaries above, the language of the clause and that of notification has given not a little difficulty in interpretation and application to the valuation of suits for different classes of land in the different provinces. The best course would be to replace it by another clause containing a simpler and more logical method of valuation which would not give rise to any difficulty. Under the present section, the burden of fee would not be uniform for lands of the same value but coming under different categories. While certain lands are to be valued at their market-value or at 15 times the annual nett profits arising therefrom which would be more or less the same, certain other kinds of lands are to be valued at so many times the annual revenue

to which they are assessed, which would be infinitely less than their real value. Now one of the fundamental principles of taxation is that and its incidence should be uniform. Judged by this test, the method of taxation provided in the clause is very defective and it is obvious that a uniform method of valuation should be prescribed as early as possible. This has been done in Bengal by Bengal Act VIII of 1935. According to the new clause substituted by that Act, all lands, buildings and gardens are to be valued at 15 times the annual nett profits, or their market value whichever is lower, except where such nett profits are not ascertainable or assessable or where there are no such profits, in which case the market value is to be taken. This is a desirable change which might well be followed.

### **Applicability of cl. v to certain specific cases —**

**Kyaung and other sanghika property (Burma).**—As these properties cannot be transferred by sale, mortgage or gift it has no market-value and the plaint should be stamped only under Art. 17 (vi) of Schedule II.

**Trust property.**—No distinction is made between a suit for possession as a beneficial owner and a suit for possession as trustee or manager of a religious endowment. Where the plaintiff alleged that he was the duly elected Mahant in the place of another and sued to recover possession of the properties attached to the Math, it was held that the case was governed by s. 7 (v) and not Sch. II, Art. 17 (vi), and that *ad valorem* court-fee was payable on the value of the properties, leaving the temple out of account as having no market-value. *Parsottamanand Giri v. Mayanand Giri*, 1932 A. L. J. 777=1932 All. 593.

Where the plaintiff brought a suit for a declaration that he was the ghatwal of the Kunjora Ghatwali and that he was improperly dismissed, for his reinstatement in the office and for recovery of possession of the ghatwali with mesne profits, it was held that the case did not fall within Art. 17 cl. (6) but under s. 7. cl. (v). *Jogendra Narain Singh v. Radha Prosad Singh*, 13 Pat. L. T. 590=1932 Pat. 319.

**Tank-bed.**—The Madras High Court has recently held that a suit by a landlord against his tenants occupying a holding under him to eject them from a tank-bed which they are alleged to have encroached upon for purposes of cultivation is governed by Art. 17-B of Sch. II as the tank-bed claimed has no market-value and s. 7 (v) has no application to the case. *Mannikkam Pillai v. Nagasami Ayyar*, 67 M. L. J. 688=152 I. C. 679=1934 Mad. 714. The reasoning does not perhaps apply to all tank-bed lands. During the dry season when the tank is not under water, the tank-bed land known as the foreshore of the tank is cultivated with dry crops and even proprietary rights are claimed over such land. In such cases it may not be correct to hold that such lands cannot have a market value.



**Suit by mortgagee-Value.**—Market-value means the market-value of the subject-matter in dispute. Where a usufructuary mortgagee files a suit for recovery of possession of the mortgaged property, the value is the mortgage amount. *Mahadi v. Gajadhar*, 73 I.C. 244. It was held in *Hennath v. Wilayat Ahmad*, 1929 Oudh 321 that a suit by a mortgagee to recover possession of the mortgaged property under the terms of the deed, cannot be governed by s. 7 (v); for it is not a suit for possession of land within the meaning of that section. The s. 7 (v) covers suits for the proprietary possession of land. In this suit the possession sought was not proprietary possession but possession as mortgagee. The case ought to be provided for under s. 7 (ix) but it is not explicitly provided for there. However the principle in that sub section is sufficient to indicate the rule to be applied which is paragraph (ix).

**Suit for possession.**—Suit for recovery of possession of lands in general fall under clause (v) while specific provisions in the Act cover cases of a special nature of ejectment, e. g., suits in ejectment by a landlord against the tenant is covered by clause (xi) and 'possession suits' viz. suits under s. 7 of the Specific Relief Act are governed by Article 2 of Schedule I. Suits for possession which are not otherwise provided for will be valued under this clause.

**Suit for declaration and possession.**—In a suit for possession it is not necessary for the plaintiff to sue for declaration of his title. At the time the plaint is filed it is impossible for a court to go into the question whether the plaint unnecessarily asked for declaration with consequential relief of possession or whether it would serve the purpose of the plaintiff to ask merely for possession. The test in such cases invariably should be whether the plaintiff includes among the reliefs claimed not merely a request for possession but as also paving the way for such request the relief of a declaration of title. It was held that where the declaration is a necessary relief the fee should be levied under cl. iv (c) and not under cl. v. *Bahra Tularam v. Dwarakadas*, 1928 All. 248. For further commentaries see under para iv (c).

Where the relief asked for was "that on proof of the plaintiff's right of ownership and of possession, and the invalidity of the sale deed, the plaintiff may be granted actual and proprietary possession of the 6 annas share by the ejectment of the defendant," it was held that the suit was one for possession and mesne profits. *Amir Hasan v. Hafiz Mohamed*, :28 I. C. 779.

A suit for declaration that a decree obtained against the plaintiff was not valid and binding on him on the ground that he was a minor at the time of the passing of the decree and that he was not properly represented in that suit, and for recovery of possession of properties covered by the decree falls under clause v. *Venkatasiva Rao v. Venkatanarasinha Satyanarayanamurty*, 139 I. C. 317=63 M. L. J. 764=1932 Mad. 605.

So also a suit by reversioners to the estate of a deceased Hindu for declaration that a sale executed by the widow was null and void and praying for recovery of possession. *Tika Ram v. Saligram*, 57 I. C. 494; also a suit for recovery of possession of land after setting aside a sale in favour of defendant. *Sarju v. Sheoraj*, 94 I. C. 179.

**Valuation in partition suits.**—As to decisions bearing on the question when suits for partition of joint family property fall under this clause see commentaries under clause (iv) (b). Where a plaintiff in a partition suit was proved to have been in joint possession of the properties with the co-proprietors, it was held that the suit should be stamped under Article 17 (vi) of Schedule II and not under s. 7 (v). *Mir Hussain Khan v. Ahmad Khan*, 29 P. L. R. 322.

**Plaintiff's valuation and defendant's appeal.**—A plaintiff's estimate of the value of the property in dispute in the suit if arrived at in contravention of the provisions of the Court-Fees Act, cannot be allowed to operate to the prejudice of the defendant at any stage of the suit and the defendant can object to the valuation when it is in his interest to do so. The plaintiff instituted a suit for possession of certain land against the defendant and valued the land for purposes of court-fees according to its estimated market-value. The suit was decreed and the defendant appealed. In his appeal the defendant admitted that the value of the land stated in the plaint was correct but he paid a court-fee at a valuation corresponding to fifteen times the net profits arising from the land during the year, next before the date of presenting the plaint. It was held that the defendant was not estopped from questioning the valuation arrived at by the plaintiff and could not be compelled to pay court-fee at a higher valuation than that prescribed by s. 7 clause (v) of the Court-Fees Act. The defendant was not estopped by having had the advantage of the original suit being tried in a superior court. *Bagavanpuri v. Secretary of State*, 40 A. 398=100 I. C. 35.

## VI. SUITS TO ENFORCE A RIGHT OF PRE-EMPTION.

**1. Computation of the fee.**—The fee is payable according to the value of the immoveable property in respect of which the right is claimed. Paragraph (vi) should be read with paragraph (v) and the value of the property should be computed in accordance therewith. *Sunder Singh v. Dhan Singh*, 15 P. R. 1919; *Narayan Nair v. Cheria Katiri Kutty*, 45 I. C. 89=34 M. L. J. 397. The court-fee is to be calculated on ten times the land revenue assessed on the land and the amount of court-fee has nothing to do with the consideration of the sale. *Chandgi Ram v. Ram Sukh*, 1933 Lah. 767. In Bengal, the value is to be computed according to the market-value of the land, building or garden and not at fifteen times the net profits as provided in cl. v—See Bengal Amendment Act VII of 1935.

**2. House or garden.**—The valuation must be according to its market-value. *Behari Mal v. Nandlal*, 2 Lah. L. J. 362=68 I. C. 345; *Bhagbari v. Jawahir Singh*, 24 I. C. 545.

**3. Indigo Factory.**—The term “land” as used in the Act does not include buildings. A claim, therefore, for pre-emption of an indigo factory, although the site of the factory may be land paying revenue to Government, must be valued and court-fees paid thereon, according to the value of the building constituting the factory, and not according to the value of the site. Such buildings as constitute an indigo factory would fall within the meaning of the term “houses” as used in the Court-Fees Act. *Surga Singh v. Bisheshar Dayal*, 24 A. 218.

**4. Property subject to mortgage.**—It is the value of the property and not merely the value of the equity of redemption that determines the fee, *Chasita Mal v. Kamshi Ram*, 123 P. L. R. 1903. This is the case even where the mortgage is a usufructuary one and immediate possession thereof could neither be obtained nor is sought. *Daryao Singh v. Bharat Singh*, 32 A. 19 F. B.=3 I. C. 562. See also *Chandgi Ram v. Ram Sukh*, 1933 Lah. 767 cited *supra*.

**5. Valuation.**—The valuation is to be determined with reference to the date of the sale and not with reference to the date of the institution of the suit. *Sher Muhammad v. Ahmad Sait*, 69 I.C. 650=1924 Lah. 380.

**6. Improvements.**—The value of improvements effected should also be added to the amount for which the property was sold, in computing the value. *Fazl v. Godar Khan*, 161 P. R. 1883.

**7. Specific plots in an estate.**—If the suit is not for any definite fractional share of an entire estate assessed to revenue, but is for several distinct plots of land, the fee payable is on the market-value of the land. *Reference under the Court-Fees Act*, 16 A. 492; *Musst. Jian v. Musst. Nadir Nishan*, 6 P. R. 1883; *Baiju v. Mir*, 14 A.W.N. 174; *Salamat Ali v. Nur Mahomed Khan*, 1933 Oudh 533.

**8. Appeals.**—The determination of the fee payable in appeals against decrees in pre-emption suits depends on whether the contention in appeal is about the existence or otherwise of the right to pre-empt or whether it relates only to the amount of consideration payable or both. If the dispute is as to the right of pre-emption the valuation must be determined according to this clause and the fee paid as laid therein. *Hafiz Ahmed v. Sabha Ram*, 6 A. 488; *Waryam v. Mahtop*, 19 I. C. 961 F. B. If the dispute is only about the amount directed to be paid by the pre-emptor, and the appeal relates solely to it, *ad valorem* court-fee is payable under Art. 1 of Schedule I on the difference in the amount decreed by the trial court and the amount which the appellant contends should have been decreed as payable. See *Mathura Prasad v. Karam Singh*, 1929 Oudh 240 following the decision in 6 A. 488 quoted above. If the objection in

appeal comprises both these contentions then cumulative fee is payable on both the contentions namely that pre-emption in respect of all the items of property as prayed for should have been granted and that the consideration decreed to be paid is excessive. *Abinash Chandra v. Shekar Chand*, 40 A. 353=44 I. C. 666. But if the defendant appeals against the right of the plaintiff to pre-empt or in the alternative against the inadequacy of the consideration decreed by the trial court as payable by plaintiff, then court-fee is payable on the higher of the two alternative reliefs. *Tekchand v. Tarachand*, 85 I. C. 566.

In a suit for possession by pre-emption, the defendant raised several pleas which though not pressed in the trial court were raised in the appellate court. It so happened further that as a result of these additional questions the defendants appellants had to pay a smaller court-fee than they would have had to pay if the same were restricted to the question of market-value. Their Lordships observed as follows "The plaintiff's counsel contends that the real object of the appeal is to have the value enhanced but that to avoid payment of court-fees on a larger amount, the defendants have resorted to the trick of adding grounds for dismissal of the suit which they had abandoned in the court below \* \* \* It is an anomaly of the law of court-fees that a person who appeals only against a part of a decree should have to pay more court-fee than one who also appeals against the whole of it. But a litigant is entitled to appeal against the whole of a decree though he intends to attack only a part of it." *Nadar Muhammad v. Kala Ram*, 9 Lah. 563. See also similar remarks in *Pathuma v. A. Moideen*, 1929 Mad. 929. No such difficulty can arise in Bengal, where by the amending Act VII of 1935, Court-fee is payable on the market-value of the property, with reference to which the suit is brought.

Where a suit for possession of a house by pre-emption is decreed on payment of Rs. 700, the court-fee on memorandum of appeal should be paid *ad valorem* on that amount as that is the market-value of the property, *Ram Labhaya v. Vaid Parkash*, 1934 Lah. 424.

**9. Valuation for purposes of jurisdiction.**—Section 8 of the Suits Valuation Act, which lays down that the value for court-fee and jurisdiction is to be the same in several cases except among others suits relating to pre-emption. Consequently the valuation of such suits need not be the same for purposes of court-fee and jurisdiction. But s. 3 (1) of the Suits Valuation Act provides that the local Government may make rules for determining the value of land for purposes of jurisdiction in suits mentioned in the Court-Fees Act s. 7 paras. v, vi and x (d). The value for the purposes of jurisdiction is determined by the subject-matter and not by the value of the property itself. *Namu v. Rash Behari*, 13 C. 255. For rules so framed in the Punjab, See Appendix. As regards Madras, no rules have been framed by the Local Government and hence s. 14 of the Madras Civil Courts Act applies. It enacts that "when the subject-matter of

any suit or proceeding is land, a house or a garden its value shall for the purposes of the jurisdiction conferred by this Act, be fixed in manner provided by the Court-Fees Act, 1870, s. 7 clause 5." See *Narayanan v. Cheria Kadiri*, 41 M. 271.

## PARAGRAPH VIII—SUIT TO SET ASIDE AN ATTACHMENT.

**Scope.**—This clause relates to suits to set aside (1) attachment of lands (2) of interest in land and (3) of interest in revenue.

**The Principle of the clause.**—The principle underlying this provision of law is that where the plaintiff seeks a certain relief, the fee that is leviable on the plaint must be commensurate with the value of the action so far as the plaintiff is concerned. Where the property attached is more valuable than the amount for which it is attached, then the fee is payable only for the latter amount. Conversely where the value of the property is less than the amount attached, then it will be absurd to expect a plaintiff who files a suit to have that attachment vacated, to pay a higher court-fee than what is warranted by the intrinsic value of the property itself. Hence in that case, the grievance of the plaintiff is the attachment and the equated value of the attachment for the purpose of court-fees is the amount for which the property is attached. The spirit of this clause is what is found in the judgment of the Privy Council in the leading case of *Phul Kumari v. Ghanshyam*, 35 C. 202. As was also observed in the *Collector of Thanai v. Dhadhabai Bomanji*, 1 Bom. 352, a person suing to set aside an attachment of land shall in no case be called upon to pay a higher fee than he would have to pay if he were suing for possession. *Dwarakadas v. Kameshwar Prasad*, 17 A. 69; *Narayana Singh v. Ayyaswami Reddi*, (1914) M. W. N. 910.

**Sch. II, Art. 17 (1).**—In the above quoted case of the Privy Council in 35 C. 202, their Lordships held that a suit to set aside a summary decision of any Civil Court was governed by article 17 clause 1 of schedule II of the Court-Fees Act. But where the jurisdiction of the court is not invoked and any adverse summary order is obtained and the grievance of the plaintiff stops only with the act of attachment and the suit is filed to vacate it, s. 7 para viii of the Court-Fees Act would apply.

**Land.**—The word 'land' does not include a house. *Dayachand v. Hemchand*, 4 Bom. 515.

**Suit to set aside execution sale.**—Where such a suit is filed on the ground that the attachment is not binding, the suit is virtually one to set aside an attachment and the court-fee is payable under this clause. *Gangadharayya v. Velu Chetti*, 14 M. L. J. 144.

**Value.**—The word 'value' in the proviso should be construed in the same way as in the previous clause of the section.

**Suits Valuation Act.**—By s. 8 of the Act, the value of suits falling under this clause is the same both for court-fees and jurisdiction.

## IX. SUITS FOR REDEMPTION, FORECLOSURE, ETC.

**Scope.**—The suits contemplated by this paragraph are (1) suits by the mortgagor for redemption and (2) suits by a mortgagee for (a) foreclosure or (b) to have a mortgage by conditional sale made absolute. The suit by a mortgagee on his mortgage for recovery of the amount received by the mortgagee being a suit for money is of course not covered by this paragraph but falls under paragraph 1 of the section. Nor does the paragraph relate to moveable property. Only immoveable property falls within its scope.

Clause (1) This refers to all suits against a mortgagee for the recovery of the property mortgaged.

**Equity of redemption.**—The right of the equity of redemption is defined in s. 60 of the Transfer of Property Act (IV of 1882) thus “At any time after the principal money has become payable, the mortgagor has a right on payment or tender, at a proper time and place, of the mortgage money, to require the mortgagee (a) to deliver the mortgage deed if any with the mortgagor, (b) where the mortgagee is in possession of the mortgaged property to deliver possession thereof to the mortgagor and at the cost of the mortgagor to re-transfer the mortgaged property to him \* \* \*. The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.”

**Valuation.**—The valuation of suits for redemption is according to the principal money expressed to be secured by the instrument of mortgage.

**(a) Principal money.**—It is the amount secured by the mortgage deed.

**(b) Interest on the mortgage amount and payment towards it.**—The valuation must be according to the principal amount secured by the mortgage irrespective of the fact that it is increased by accruing interest or diminished by payments towards it. *Eacharam Patter v. Appu Pattar*, 19 M. 16.

**(c) Discharged mortgage.**—Even in a case where the plaintiff alleges that the mortgage has been discharged and prays for return of the deed, then too the value of the suit is the principal amount secured by the mortgage. *Bansillee v. Sitku*, 57 I. C. 673.

**(d) Payment in kind.**—It was held in *Sreedhara Nambudri v. Perumbara Nair*, 22 L. W. 408, that where in a Malabar Kanom and Porankadan it was agreed that a certain sum and a certain quantity of paddy valued at a certain price was fixed as the amount of the Porankadan, the court-fee payable in a suit for redemption of the

kanom and Purankadan was on the amount so mentioned in the document and not in the market-value of the paddy on the date of the plaint.

**(e) Redemption in part.**—A person who is interested in a share only of the mortgaged property is not entitled to redeem his share alone, on payment of a proportionate part of the amount remaining due on the mortgage except where a mortgagee or if there are more mortgagees than one, all such mortgagees has or have acquired in whole or in part the share of the mortgagor (s. 60, T. P. Act). Where there is such a partial redemption, the mortgage amount must be taken to have been evenly spread over the whole mortgaged properties so that there is an uniform distribution of the burden. Where a part is sought to be redeemed therefore, the principal money expressed to be secured must be taken to be proportionate to the amount of the debt for which such portion of the property is liable. *Balakrishna v. Nagvekar*, 6 B. 324; *Amanat Begum v. Bhajan Lal*, 8 A. 438 (F.B.) See further under 'Summary of the principles of Valuation' *infra*.

### **Valuation of suits where redemption is coupled with other reliefs.**

**(a) General.**—Where the suit does not pray for the redemption of the property as the sole relief, the question becomes complicated. This happens in cases where a usufructuary mortgage is sought to be redeemed and in cases of Malabar Kanom.

Taking the case of a usufructuary mortgage it may so happen that the receipt of mesne profits by the mortgagee from the property may exceed the principal amount and interest due under the mortgage deed, in which case there will be a surplus due to the mortgagor-plaintiff. In such a case the plaintiff has got a statutory right to have accounts taken of the receipts of the mortgagee from the property and the mortgagee is under a statutory obligation to account for such receipts. Hence arises a difference of views as to whether it is included in the prayer for redemption. If the plaintiff should pray for accounts being taken then the question arises whether the plaintiff should not in accordance with the provisions of O. 7, r. 2 put a value on the amount he claims from the mortgagee. If he so specifies a figure the next point to be determined is whether he has to pay separate court-fees for same or not.

**(b) An usufructuary mortgage and a Malabar Kanom contrasted.**—"The cases *Kona Panikkar v. Karunakara*, 16 Mad. 328 and *Rameswara Raji v. Khadar*, 16 Mad. 415 relate to Kanom. In those decisions it was held that in Malabar the mortgagor suing a Kanomdar for redemption should pay court-fees on any rent that he might claim. It was held that a Kanom mortgage in Malabar is not purely a mortgage but also a lease. It might therefore be said that redemption of Kanom mortgage does not include any claim for rent based on the transaction as a lease; while with regard to bare

usufructuary mortgages the plaintiff is entitled in a suit for redemption to have an account taken between him and the mortgagee and the payment by the mortgagee of whatever might be found to be due to him on the taking of accounts." Per Sundara Aiyer, J., in *Kodi Venkoba Rao v. Suryanarayana*, 12 M. L. J. 493.

Consequently the decisions that relate to redemption of Kanom mortgage, could not be applied to cases of redemption in ordinary usufructuary mortgages. In an usufructuary mortgage the possession of the property passes from the mortgagor to the mortgagee by virtue of the mortgage itself and there is no question of lease or rent arising. It usually happens in such cases for the mortgagee to lease the property to the mortgagor and any claim for rent could obviously arise only in a suit by the mortgagee and not in any suit for redemption: thus a usufructuary mortgage is quite different from a Kanom mortgage which is a simple mortgage and a lease combined, the mortgagor being the lessor.

**(c) Duties of an usufructuary mortgagee.**—Where the mortgagee is in possession of the property s. 76 of the Transfer of Property Act provides that he must keep clear, full and accurate accounts of all sums received and spent by him as mortgagee and the receipts from the mortgaged property shall be applied first in the discharge of the interest due and then in reduction or discharge of the mortgage money and the surplus if any shall be paid to the mortgagor.

**(d) Madras view.**—It is presumed that the view of the High Court of Madras is that court-fee is payable on any surplus of receipts that may be claimed by the mortgagor from the mortgagee. In the leading case in Madras which is set out below, Sundara Aiyer, J., has refrained from making a definite pronouncement on this question. Still the judgment contains sufficient indications as to the Madras point of view which is to the effect that where surplus profits are claimed, separate court-fee is payable thereon.

In *Kodi Venkoba Rao v. Suryanarayana*, 12 M. L. J. 493, it was held that all suits merely to redeem mortgages without praying for any additional relief against the mortgagee came under s. 7 clause IX. "In this case, the plaintiff alleged that he believed that the mortgage debt has been discharged by the usufruct of the mortgaged property some time before the plaint. He stated also what he believed to be the annual income from the property. In the prayer in the plaint he asked for recovery of possession and for an account being taken of the income of the property and for payment of whatever may be found due on the taking of the account. The plaintiff did not value his prayer for the recovery of money, having apparently proceeded on the view that no extra stamp duty is payable for recovering any surplus that may be found due from the mortgagees." Sundara Ayyar, J., observes as follows "It is argued that in a suit for redemption, the mortgagor-plaintiff is not bound to pay court-fee separately on any



amount which he might claim as payable to him as the result of the accounts between the parties and he relies on *Husaini Khanum v. Husan Khan*, 29 All. 471. This case seems to be in support of his contention. Section 7 clause ix of the Act, according to its language applies to suits for recovery of immoveable property mortgaged. Recovery of possession is the only description contained in the clause. *It is therefore doubtful whether it would be right to hold that if there is any prayer for payment of money in addition to recovery of possession that prayer need not be separately valued and court-fee paid on the value put.*" In the end it was held that the lower court should call upon the plaintiff to state the amount which he claims as due from the defendants and levy court-fees on the amount.

That the view of the Madras High Court is that separate fee is payable on the surplus claimed is clear from the judgment of Jackson, J., in *Govindan Nayar v. Ithaletty*, 50 M.L.J. 493 = 1926 Mad. 764. The question arose in a suit for redemption of a Kanom. The plaintiffs mortgagors also claimed damages which they wanted to be set off against the Kanom amount or the amount payable by way of improvements. It was held that the plaintiffs were not bound to pay any court-fee on the amount of damages till after it is ascertained and a set off is allowed. Of course this is a suit relating to a Kanom mortgage and there is a distinction between the cases of a suit for the redemption of a usufructuary mortgage where statute casts an obligation on the mortgagee to account for the mesne profits received by him and the case of a suit for the redemption of a Kanom mortgage where rent is claimed or a claim for damages is preferred and the same is sought to be set off against the value of improvements payable to the mortgagee under the Malabar Compensation for Tenants Improvements Act (Madras) the statutory obligation to account being absent in the latter case.

**(e) Madras view considered.**—There appears to be no decision on this question in Madras beyond the observations of Sundara Ayyar, J., in 12 M. L. J. 493. But it may be noted that the learned judge states in the course of his judgment that there was no necessity for him to decide the point, as the question in appeal was one of jurisdiction, and whatever may be the view taken the jurisdiction was not altered in that particular case. Sadasiva Ayyar, J., who was also a party to that decision does not pronounce any opinion on this point. Under those circumstances it is doubtful whether there is a definite pronouncement by the Madras High Court whether additional fee should be paid. If that be the view it is against the view of the other Courts and is well worth reconsideration, for reasons that are cogently set out in *Wajdi Begum v. Abdul Gani*, 1929 Nag. 1. "The Civil Procedure Code gives a statutory jurisdiction to the court to pass a decree for the surplus; and ordinarily for a relief which is an outcome of a statutory provision, no court-fee is payable. For instance, where interest is decreed during the pen-

dency of a suit no court-fee is charged, and as the surplus is the result of accounting directed by the court under O. 37 r. 7, it cannot be separately charged for court-fees. As observed in *Huseni Khanam v. Husain Khan*, 29 All. 471=4 A. L. J. 375, where the mortgagee is in possession, the suit is substantially one for accounts and it would not cease to be so merely because the accounting shows a balance in favour of the plaintiff instead of that of the mortgagee. In a case where the account discloses that money is due on the mortgage to the mortgagee and this sum is decreed in his favour, the decree is not made conditional on payment of court-fee calculated on that amount. There is no reason why if the account results in a surplus as contemplated by O. 34 r. 9 being payable to the mortgagor, he should pay court-fee for the same." In the Madras decision while Sundara Ayyar, J., felt the cogency of the argument that the accounting being a statutory obligation cast on the mortgagee, no separate fee is leviable, still he felt a difficulty arising out of a strict construction of the language of the section "Recovery of possession is the only description contained in the clause. It is therefore doubtful whether it would be right to hold that any prayer for payment of money need not be separately valued." But though the only relief warranted by the language of the clause is 'Recovery of possession' alone still, their Lordships construed the clause as covering not only a suit for the relief of 'recovery of possession' but *all suits* for redemption. A similar and further extension of the application of the clause to cases where the relief is not simply for recovery of possession but also for the recovery of surplus profits seems to be not unwarranted. Otherwise if the language is strictly construed it may lead to anomalies. For instance where there is an accession to the mortgaged properties, a mortgagor could not recover the additional property on the accession, in a suit for redemption, as the language of the clause is the 'property mortgaged' and may not be held to cover later 'accessions.' Again if there is a prayer for cancellation of the mortgage deed as discharged or for reconveyance of the property that will have to be valued separately which is obviously not correct.

And further what is after all the scheme of valuation? The fee is to be levied on the mortgage amount. It may be—and in almost all cases it is so—the amount actually due under the mortgage deed on the date of redemption is a much larger amount than the principal amount on account of accruing interest, or it may be a much lower amount on account of repayments. Still the fee is levied on the principal amount of the mortgage. This is obviously a rough and ready valuation and nothing more. Does the Act provide for the levy of additional fee later on as in the case of account suits? No. Therefore if the view is taken that where there is a claim for surplus profits that should be separately valued under O. VII r. 2, then there is again an approximate value to be put on it and a fee paid which must be readjusted later. In that case there will be practically two valuations, ~~in the same suit~~. On the whole it is submitted that it is safer to hold

that the fee laid down in the clause as leviable is applicable to all suits for redemption irrespective of the question whether the relief for redemption is the sole relief or is coupled with additional reliefs.

**(f) The view of the other High Courts.**—The value of a suit for redemption, even when surplus profits are also claimed, is for jurisdiction and court-fee, the amount of principal expressed in the instrument of the mortgage. The earliest decision in ALLAHABAD is that in *Hussain Khanam v. Hussain Khan*, 29 A. 471. This was followed by the decision in *Gopikishan v. Sorabjee*, 68 I. C. 226. But in the former case, the plaintiffs claimed payment of any sum which might be due to them after taking the accounts whereas in the 68 I. C. 226 decision a definite sum of money was sought to be recovered as surplus. Still it was held that there was a prayer in the plaint that the surplus amount was put only tentatively and as the plaintiff offered to pay the additional fee if more was found due, it was treated as on a par with the 29 All. decision and the court-fee on the principal sum of mortgage alone was held to be sufficient.

Where a suit is filed by the mortgagor for redemption and there is also a prayer that an account may be taken and the amount due by one party to the other may be ordered to be paid, it does not alter the nature of the suit which continues to be suit for redemption, *Chiddu v. Jhanjhan*, 45 A. 154 = 70 I. C. 303 = 1923 All. 261.

**Nagpur.**—Where in a suit for redemption surplus profits also are claimed, court-fee need be paid only on the principal amount due and not on the profits claimed. *Daulat Ram v. Fulab Chand*, 1924 Nag. 346. In *Seth Gopi Kishan v. Sorabjee*, 68 I. C. 226 = 1922 Nag. 259 it was held that s. 17 Court-Fees Act does not apply to a case of redemption by a usufructuary mortgagor where there is also a claim for excess realised by the mortgagee of profits arising out of the mortgaged property. The valuation for a suit for redemption of a mortgage even when surplus profits are also claimed is both for purposes of court-fees and jurisdiction, the principal amount expressed in the deed of mortgage. The Code of Civil Procedure gives the court a statutory jurisdiction to pass a decree for the surplus and for such a relief which is the outcome of a statutory provision, no separate court-fee is payable. For instance where interest is decreed *pendente lite* no court-fee is charged, and as the surplus is the result of accounting directed by the court under O. 34, r. 7 it cannot be separately charged for purposes of court-fees. *Mt. Wajdi Begum v. Abdul Gani*, 1929 Nag. 1.

## **Malabar Kanom.**

### **1. Difference between a kanom and a mortgage.**

“Kanom means the transfer for consideration in money or in kind or in both by a landlord of an interest in specific immoveable property to another, (called the Kanomdar) for the latter's enjoy-

ment." S. 3 (2), the Malabar Tenancy Act (Madras Act XIV of 1930). The difference between a Kanom in Malabar and other mortgages has already been explained in the discussion of the judgment of Sundara Ayyar, J., in 12 M. L. J. 493.

## 2. Valuation.

(a) **Simple kanom.**—The valuation of such a suit came up for consideration in *Reference under Court-Fees Act*, 14 M. 480. In that case the Kanom amount, viz., the mortgage money has been practically paid off by rent that accrued due and payable by the mortgagee to the mortgagor. The question was whether while the actual amount due is a smaller sum than the mortgage money the plaintiff should nevertheless pay the court-fee on the whole principal amount secured by the mortgage. It was held that he should. Their Lordships observed as follows:—"It is urged that the original debt may have been considerably reduced by payment made prior to the institution of the suit and that it is not reasonable to compel the plaintiff to pay institution fee on so much of the debt as has been extinguished by payment. But the language of the sub-section is clear and unambiguous and according to it, institution fee is payable on the principal money expressed to be secured by the instrument of mortgage. *The intention is to make the principal money so secured the criterion of the value of a suit for redemption.* It may be that the Legislature did so provide because the amount actually due by the mortgagor to the mortgagee must be a matter of account to be taken in the suit and therefore uncertain at date of its institution." It may be noted that the general principles enunciated by their Lordships suggest a more liberal view on the question of the computation of court-fee than what is warranted by the later decisions of the Madras High Court. For, if the accepted view is that the Legislature intended that the value of the principal money should be the *sole* criterion for a suit for redemption, then it follows that when additional relief in the shape of the recovery of surplus rent is asked for, no additional court-fee is leviable.

(b) **Redemption coupled with other reliefs.**—In *Rama Varma v. Kadir*, 16 M. 415, the prayer was for redemption and recovery of arrears of rent in respect of a Malabar Kanom, the court-fee was levied both on the principal amount of Kanom debt and the amount claimed as arrears as they were held to be two distinct causes of action. In this case it did not appear that the arrears of rent were intended to be set off against the mortgage debt, and rendered items of account to be taken between the mortgagor and the mortgagee. In this case the Kanom debt was Rs. 35,000 and the rent claimed was Rs. 1,917. If the rent had been prayed to be set off against the debt, the plaintiff need have paid court-fee only on the principal Kanom mortgage amount and no fee need have been paid on the claim for rent. The decision in 14 M. 480 was not referred to. See also *Kona Ramdas v. Karunakara*, 16 M. 328.

**(c) Where rent is sought to be deducted from the kanom amount.**—In *Eacharam Pattar v. Appu Pattar*, 19 M. 16, it was held that in a suit for redemption against a mortgagee in possession, when the mortgagee has not paid rent which has been stipulated for, and the plaintiff asks for an account in taking which the arrears of rent should be deducted from the mortgage amount, the court-fee should be computed on the principal sum expressed to be secured by the mortgage. The decision in 16 M. 328 is distinguished as in that case the claim was for redemption *and* rent while in this case the rent is sought to be *deducted from* the Kanom amount and no balance is to be recovered.

**(d) Valuation not affected simply by the suit being based on title also.**—The court-fee payable in a suit to redeem a Kanom should be calculated in accordance with the provisions of s. 7 (ix). The fact that he refers to his title in the plaint is immaterial. *Moopil Nair v. Ammalu Amma*, 95 I. C. 26 = 23 L. W. 758 = 1926 Mad. 667.

**(e) Liability for improvements sought to be set off against mortgage money.**—*Govindan Nayar v. Ithaletty*, 50 M. L. J. 493 = 1926 Mad. 764, is a suit for redemption of a Kanom. The plaintiffs also claimed damages which they wanted to be set off against the Kanom or the amount payable by way of improvements. It was held that he was not bound to pay any court-fee on the amount of damages till after it is ascertained and a set off is allowed. The words “any sum of money accruing for rent or otherwise in respect of the tenancy” in s. 6 (3) of the Malabar Compensation for Tenants’ Improvements Act I of 1900, were held to be wide enough to include damages and damages cannot be taken into account in ascertaining the value of the suit for purpose of court-fees and jurisdiction.

**(f) Summary.**—From the several decisions quoted above, the following principles about the valuation of Kanom suits could be evolved.

1. A Malabar Kanom is not a mortgage pure and simple. It is a mortgage and lease combined.

2. Where the Kanom amount has been paid off in part by the rent due by the mortgagee to the mortgagor, still the fee payable is not on the actual amount due but on the principal amount secured by the mortgage.

3. Where the mortgagor sues to redeem and also prays for rent, the reliefs constitute two distinct causes of action and separate court-fee is payable on each of the reliefs.

4. Where the mortgagor sues to redeem but prays that the rent due to him may be set off against the mortgage amount and deducted from it, then it is not a suit for redemption and rent and the fee payable is only on the principal amount.

5. But when the rent is sought not merely to be set off against and deducted from the Kanom amount but where the rent exceeds the mortgage money a sum is sought to be recovered by the mortgagor, the court-fee is payable both for redemption on the principal money and on the surplus claimed from the mortgagee.

6. The mortgagor in a suit for redemption need not necessarily fix a value on the claim for rent. As the amount could be ascertained only later, no court-fee is payable when the suit is filed but only on the ascertainment of the amount by the court.

7. The same rules apply to amounts claimed as damages or as compensation for improvements effected.

### **Suits for possession, redemption, etc. in Malabar.—**

The peculiar land laws that prevail in Malabar render the application of the Court-Fees Act to suits arising thereunder highly artificial. For a full discussion of this topic and the necessity to frame rules to cover these cases see the commentaries at the end of section 7.

### **Court-fees in certain specific cases.**

1. **Declaration and redemption.**—Where a plaintiff prayed for a declaration that a decree obtained against him and a sale held thereunder are void on the ground of fraud and for redemption, it was held that the prayer for redemption was a consequential relief and that an *ad valorem* court-fee on the value of the share of the property claimed is payable. *Pandit Brij Krishna Das v. Chawdhury Murli*, 4 Pat. L. J. 703.

2. **Suit between co-mortgagors.**—Where one of two co-mortgagors has redeemed a mortgage asserting that he has got the sole right to redeem, and the other asserts equally exclusive right to redeem, the suit of the other co-mortgagor in enforcement of his right to redeem is a redemption suit and must be valued on the amount of mortgage. *Shanker Baksh v. Ram Bahadur*, 70 I. C. 311 = 1922 Oudh 45.

3. **Usufructuary mortgage.**—A suit for recovery of possession by a usufructuary mortgagee also falls under clause ix. *Karaman Singh v. Norman Cockell*, 1 C. W. N. 670. In a suit for possession as usufructuary mortgagee the court-fee payable is on the market-value of the mortgagee interest in the property, *i.e.* the mortgage money on payment of which the property can, at any time, be redeemed. The expression "market-value" in s. 7 (v) (d) of the Court-Fees Act means the market-value of the subject-matter of the suit. This is akin in principle to *Ramraj Tewari v. Girnandam*, 15 A. 63 and *Radha Prasad v. Path Ojab*, 15 A. 363, where it was held that in a suit for ejectment of a tenant the subject-matter is the value of the tenant's interest which was in dispute. *Mahid v. Gajadhar*, 73 L.C. 244.

Where a suit for possession is laid after a decree for foreclosure has been obtained the valuation of such a suit in so far as the jurisdiction of the court is concerned is to be calculated according to the scale laid down in the Court-Fees Act for possession of immoveable property. *Ahollya Bai v. Shama Churn*, 1 C. L. R. 473.

### Valuation of suits for jurisdiction.

**Conflicting views.**—The several High Courts take different views on this point. One view is that the valuation for jurisdiction is the same as the value for court-fee, another is that the valuation for jurisdiction is the amount actually due under the mortgage and not merely the principal money secured by the mortgage deed. A third view is that the value for jurisdiction is the value of the mortgaged property. In this connection reference may be made to the Select Committee's Report on the Suits Valuation Act printed in the Appendix, by which it would appear that suits coming under this clause have been deliberately excluded from the operation of S. 8 of that Act.

**Madras.**—The view of the Madras High Court is that the value for court-fee and the jurisdiction is the same. In a suit for redemption of a Kanom and for the recovery of rent, the value for jurisdiction is the aggregate value of the two reliefs. *Kona Panicker v. Karunakara*, 16 M. 328.

In a suit for redemption of a mortgage instituted in subordinate judge's court, the amount of the principal debt was Rs. 3,899 and odd. The plaintiffs paid court-fees on that amount; but the sub-judge erroneously ordered that the plaintiffs should pay court-fees on the total amount payable on redemption, *viz.*, Rs. 7,218 and odd and the plaintiffs paid the deficit court-fees. The sub-judge passed a decree in the suit in favour of the plaintiffs. The defendants preferred an appeal to the High Court. The respondents objected that the appeal did not lie to the High Court but to the District Court. Their Lordships while holding that the amount of the principal debt must be taken as determining the jurisdiction observed as follows. "Prior to the enactment of the Suits Valuation Act 1887, it was held in *Zamorin of Calicut v. Narayanan*, 5 M. 284 (F. B.) by this court following earlier decisions that under the provisions of the Madras Civil Courts Act, the method of valuation prescribed by the Court-Fees Act for suits of this description ought to be followed in ascertaining the valuation of the suit for purposes of jurisdiction. The Suits Valuation Act has not fixed any method of valuing such suits nor has it apparently enabled such a method to be prescribed by rule. Consequently the decision in 5 M. 284 is unaffected and the amount of the principal debt must be taken as determining the jurisdiction under the Civil Courts Act". *Jallaluddin v. Vijayasami*, 39 M. 447.

This question was again sought to be agitated in *Sreedharam v. Parameswaran*, (1925) M.W.N. 74. It was urged that the amount on which court-fee is paid is not necessarily to be taken as the value

for purposes of jurisdiction. Odgers, J., observed as follows: "It is admitted that I am concluded by authority of a Bench of this Court in *Jallaluddin v. Vijayasawmi*, 39 M. 447, wherein it was held that the Suits Valuation Act has not fixed any method of valuing a redemption suit, that the authority of *Zamorin of Calicut v. Narayanan*, 5 M. 281, remains unaffected and that the principal debt must be taken as determining the jurisdiction under the Civil Courts Act. There is apparently a recent dissenting judgment in *Sarada Sundari v. Akramanissa*, 51 C. 757, where the Madras decision is disapproved". In the end it was held that it was not necessary for the Court to decide the point.

**Bombay.**—The view of the Bombay High Court is that the valuation is not on the principal money secured by the deed but on the amount found to be actually due on the document.

In a redemption suit, the whole of the mortgagor's interest is not except in rare instances in litigation. The measure of the value of the subject-matter in contention is the sum which must be paid for the recovery of possession of the property. Under the Court-fees Act, the valuation of such a suit is estimated according to the principal money expressed to be secured by the instrument of mortgage; but the rules contained in that Act are not to be taken as necessarily a guide in determining the value of the subject-matter of a suit for any purpose for which the Act does not provide; as for example, for purposes of jurisdiction, see *Bai Maliks v. Bulakshi Chakko*, 1 B. 538." *Rupchand v. Balvant*, 11 B. 591.

In a redemption suit, the valuation of the subject matter does not depend on the value of the mortgaged property. Where the mortgage itself is denied and the mortgagee does not say what he claims in respect of the mortgage debt, the amount found to be remaining due on the mortgage, if any amount was due at the date of the suit, would represent the true valuation of the subject-matter of the suit. *Amirta v. Naru*, 13 Bom. 439.

**Calcutta.**—According to the Calcutta High Court, the valuation depends on the value of the subject-matter of the suit. Where a suit for redemption was filed in the court of the Munsif who proceeded by way of a preliminary issue to decide the question whether he had the pecuniary jurisdiction to try it, and upon the evidence let in on both sides came to the conclusion that the debt due by the plaintiffs to the defendants was over Rs. 1,000, and consequently the suit was beyond his jurisdiction, the plaint being accordingly returned for presentation to the proper court, it was held that the order was correct and that in redemption suits, jurisdiction would depend not on the amount assessed but on the amount ultimately found to be due. The decision in *Kedar Singh v. Matabadal Singh*, 31 A. 44 and in *Jallaluddin v. Vijayasami*, 39 M. 447 were dissented from." *Sarada Sundari v. Akramanessa*, 51 C. 737. Their Lordships observed thus at page 742 of the Report: "If the Legislature has not contemplated a change in



the law (when the Suits Valuation Act was passed) it is not easy to understand why redemption suits should have been expressly excluded from the operation of s. 8 of the Suits Valuation Act. The section does not say that the value determinable for the purposes of jurisdiction is the value determinable for the purposes of the initial payment of court-fees." As has already been observed, the Legislature did seem to have contemplated a change in the enactment of s. 8 of the Suits Valuation Act. See the Report of the Select Committee on that Bill printed in the appendix.

**Rangoon.**—The Rangoon view is similar to the Calcutta view. Although for purposes of court-fees the value of the suit for the recovery of the property mortgaged is the principal money expressed to be secured by the instrument of mortgage the mortgage money is not the basis for valuation for purposes of jurisdiction. In such cases the value of the mortgaged property should be the basis. *Ma Hla Singh v. Ma Su Wu*, 1927 Rang. 304.

### Clause (2).

**Foreclosure suits.**—A suit to obtain an order that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure, (S. 67, Transfer of Property Act.) This does not apply to a simple mortgage. In United Provinces and Central Provinces the clause is amended so that such suits are to be valued not according to the principal amount of the mortgage, but according to the amount actually claimed by the plaintiff.

### Clause (3).

**Suits on mortgages by conditional sale.**—Section 58 (c), Transfer of Property Act defines such a mortgage as follows "Where a mortgagor ostensibly sells the mortgaged property on condition that on default of payment of the mortgage money on a certain date the sale shall become absolute, or on condition that on such payment being made the sale shall become void, or on condition that on such payment being made the buyer shall transfer the property to the seller, the transaction is called a mortgage by conditional sale." Where a suit is so brought by the mortgagee to have the sale declared absolute, the valuation should be according to the principal amount secured by the mortgage. *Hazara Singh v. Muhammad Khan*, 134 P. L. R. 108. [According to the amendment made in United Provinces and Central Provinces the valuation should be according to the amount actually claimed by the plaintiff.] But where the plaintiff sues for recovery of possession of land alleging that he had foreclosed it under the provisions of Regulation XVII of 1806 the suit is one for possession of land and falls under s. 7, para. (v) and not under this clause. *Tulu Mal v. Lal Singh*, 20 P. R. 1893.

**Valuation in appeals.**—The question of valuation of appeals in suits falling under paragraph (ix) gives rise to difficulties by reason of the fact that the word in that paragraph is "suit" and the word "appeal" is absent.

**Madras.**—In a *Reference under the Court-Fees Act* reported in 29 Mad. 367, it was held that paragraph ix of s. 7 applied only to suits and not to appeals therefrom which is chargeable on the amount actually in dispute in appeal. The opinion was based on the fact that sub-section (e) of clause iv, specially provides for a memorandum of appeal, while there is no such provision in paragraph (ix). “The repeal of s. 16 also shows that the general policy of legislature was to make the value of the subject-matter in dispute in appeal the criterion for the purpose of computing the fee”. This decision is referred to in *Sekharan v. Eacharam*, 20 M. L. J. 121 = 3 I. C. 459, a later decision of the Madras High Court, wherein the whole scheme of valuation under para (ix) is fully discussed as follows. “The court-fee payable on a document of any of the kinds specified in the First or Second Schedules of the Court-Fees Act is indicated in one or other of those schedules—*Vide* ss. 4 and 6 of the Court-Fees Act. Article 1 of schedule I is a general article indicating the fee payable in respect of a plaint or memorandum of appeal not otherwise provided for in the Act, that is we take it not falling under any other Article of the First or Second Schedules, as it is those schedules alone that indicate the fee. A perusal of the two schedules will show that a plaint or memorandum of appeal in a redemption suit can only come under Article 1 of schedule I. Under that article the court-fee has to be computed at a stated rate on the amount or value of the subject-matter in dispute so that before we can ascertain the amount of the fee we must know the value of the subject-matter in dispute. Now a suit for redemption is a suit to recover property mortgaged on payment of what is alleged to be due to the mortgagee. The plaintiff may show that in addition to the principal money arrears of interest and compensation for improvements are payable to the mortgagee before the property can be recovered. It may also indicate that the defendant is claiming more under one head or another than the plaintiff admits to be due. Nevertheless s. 7 para ix of the Court-Fees Act lays down that the fee in such a suit shall be computed according to the principal money expressed to be secured by the instrument of mortgage. Hence in such a suit it must be taken that for the purposes of Article 1 of Schedule I the value of the subject-matter in dispute is the said principal money. From this it seems reasonable to infer that for the purposes of the Court-Fees Act the subject-matter of dispute in a redemption suit is the existence of the right to redeem, any question as to the amount payable as the condition of redemption being regarded as merely incidental to that right. Let us suppose that such a suit is dismissed and that the court dismissing the suit has also recorded a finding that if it were found that the plaintiff had the right to redeem he would have to pay more than the amount alleged by him to be due. The plaintiff on appeal would necessarily urge his right to redeem, and might also contest the finding as to the amount payable. The nature of his suit in appeal would, however, be in no way altered and there is no sound reason why the

subject-matter in dispute in the appeal should for the purpose of the Court-Fees Act be regarded as different from the subject-matter in dispute in the plaint, *i. e.*, the existence of the right to redeem. How are we then to value that subject-matter in the case of the appeal memorandum? We can only value it as in the case of the plaint as otherwise there is no provision in the Court-fees Act for valuing it. Suppose again the plaintiff gets a decree for redemption and the defendant, as in the present case, appeals, contending that the plaintiff has no right to redeem, and in the alternative that if the plaintiff has the right to redeem the amount payable by him is greater than that found by the lower court. Here again the nature of the suit is in no way changed in appeal. The same questions arise as arose originally, *viz.*, the existence of the right to redeem, and the amount payable if the right is found to exist. There is no good reason why a defendant appealing on such grounds should be in a worse position than a plaintiff appealing on similar grounds, or why the subject-matter in dispute in the defendant's memorandum of appeal should not also for the purpose of the Court-fees Act be taken to be the same as the subject-matter in dispute in the plaint . . . . We are not here concerned with the case where in the appeal by the plaintiff or the defendant against a decree in a redemption suit the only question is the amount payable. In such a case the existence of the right to redeem cannot be said to be the subject-matter in dispute in the appeal memorandum, for the existence of that right is not disputed. The subject-matter in dispute is a definite amount. The memorandum of appeal can only however as before come under Article 1 of Schedule I for the purpose of computing the court-fee and under that Article the court-fee is to be computed on the amount in dispute. The result is the same as that arrived at in *Reference under Court-Fees Act*, 29 Mad. 367." See also *Meloth Kannam Nair v. Kombi Raman* (1914) M. W. N. 231.

In *In re Porkodi Achi*, 45 M. 246 it was held that in cases of appeals where the value of the subject-matter of the appeal can be determined, the court-fee payable on the memorandum of appeal must be calculated on the value of the subject-matter in appeal. The test is what is the value of the relief granted which is sought to be got rid of. When a decree grants relief on payment of a certain sum to the defendant the court-fee payable on a memorandum of appeal against so much of the decree as directs payment is *ad valorem* on the said sum irrespective of the nature of the suit.

The general principles of valuation in appeal are elaborately discussed and the whole case law reviewed at length in *Pathuma Umma v. Aligamakkanakath Mohideen*, 1928 Mad. 929. In this case the defendants against whom a decree for ejectment has been made appealed to the High Court against the refusal of the lower appellate court to grant him the value of certain improvements consisting in the construction of a pucca building on the site in question. In the trial Court before the District Munsif the decree in favour of the

plaintiff included a condition that the plaintiff should pay the defendants a specified amount as and for improvements. This condition in the decree was in appeal deleted. It was observed thus "The provision in the Court-fees Act is that in respect of a memorandum of appeal in such a case the court-fee payable is *ad volorem* on the amount or value of the subject-matter in dispute. The true logical position then is that, if the subject-matter in dispute in appeal has reference merely to the value of the improvements, then the value thereof should be taken to be the value for purposes of appeal and court-fee should be paid thereon. \* \* \* Though there is considerable force in the contention of the respondents that the subject-matter in dispute has reference only to the amount of compensation and that the question of title raised is a mere camouflage for escaping liability for court-fees, we are not prepared to say that especially in the case of an enactment for revenue purposes such as the Court-fees Act, it is not open to parties to avail themselves of any camouflage that the law allows or does not forbid. We are not prepared to say that it is open to a court in such circumstances to neglect the actual form of the appeal and determine the question of court-fees having regard to what may be said to be the substance of the claim." \* \* \* The decisions in 23 M. 84, 20 M. L. J. 121, and 45 M. 246 were then referred to. They further observed. "In *Nellyoton Paidal Nair v. Emperor*, 1926 Mad. 225, where a plaintiff who got a decree for the redemption of a kanom, appealed against the amount which he had been ordered to pay as compensation for improvements, Philipps and Ramesam, JJ., decided that he must pay court-fee on the amount of compensation which he disputed. The effect of these cases is that the *obiter dictum* in 23 M. 84 that even where the only question raised is as to the value of the improvements the appellant should not be called upon to pay any fee other than that payable in a suit for possession of land has not been adopted in later cases. But the actual decision in 23 M. 84 that defendant disputing on appeal both the plaintiff's title to recover and the amount of compensation to be awarded need pay court-fee only as on a suit for recovery of possession, has never been overruled. It is not clear whether in *In re Porkodi Achi*, 45 M. 246, Kumaraswami Sastriar, J., intended to express his dissent both from the *obiter dictum* and from the actual decision in *Reference under Court-Fees Act*, s. 5, 23 M. 84. If the latter was his intention, his opinion was itself an *obiter dictum*." S. A. 1266 of 24 (Madras High Court) in which Srinivasa Aiyangar, J., came to a decision contrary to that in 23 M. 84 was explained away by the learned Judge himself. "It is not difficult to find arguments against the decision in 23 M. 84. But that decision has stood for nearly 30 years and has been followed in almost innumerable cases in Malabar and in this Court. I agree that we must continue to follow it." Per Reilly, J., in 1928 Mad. 929.

**Oudh.**—The decision of the Judicial Commissioners of Oudh in *Sarsat Baksh v. Raivat*, 25 O. C. 30, is equally lucid and presents

the other view that 'suit' includes also appeals. Their Lordships observe thus "The provisions of s. 7 are applicable equally to appeals as to original suits and the word 'suit' is not there used in contradistinction to 'appeal.' Court-fees are payable not on suits or on appeals but on documents which are filed, exhibited or received in courts in accordance with s. 6 of the Act. The Court-fees payable in appeal need not be the same as in the suit as the nature of the litigation may be changed in appeal.

(1) If a suit for redemption or foreclosure has been dismissed the court-fee payable by the plaintiff appellant on his memorandum of appeal will be computed in accordance with the provisions of clause ix of s. 7 of the Court-Fees Act, that is, according to the principal money expressed to be secured by the instrument of mortgage. In such a case clearly the suit has not changed its nature in appeal.

(2) If a suit to redeem has been decreed and the defendant-appellant merely challenges the right to redeem the court-fee payable on the memorandum of appeal will be computed in accordance with the provisions of clause ix of s. 7 of the Court-Fees Act. Here again there is no change in the nature of the suit.

(3) If a suit to redeem or foreclose has been decreed and the plaintiff or defendant in appeal merely challenges the amount to be paid or received without questioning the right to redeem or foreclose, the court-fee payable on the memorandum of appeal will be on the subject-matter in dispute that is on the additional amount claimed or the amount in respect of which the appellant seeks to avoid liability. In this case the suit has clearly changed its nature in appeal; and is no longer a suit falling within the provisions of clause ix of s. 7 of the Act.

(4) Where in a foreclosure suit a decree has been passed for a certain sum in default of payment of which within a fixed time the property shall be foreclosed and the defendant in appeal denies the plaintiff's right to foreclosure on the ground that he is not liable to pay any portion of the sum decreed, the court-fee payable on the memorandum of appeal will be calculated *ad valorem* on the subject-matter in dispute according to Article 1 of Schedule I, that is, on the amount of the decree the payment of which the defendant by his appeal seeks to avoid. In this case the suit has clearly changed its nature in appeal and has become a suit to avoid the payment of a specific sum.

(5) Where a decree has been passed for redemption on payment of a certain sum and in appeal the defendant not only denies the plaintiff's right to redeem but in the alternative claims that if he be entitled to redeem he can do so only on payment of a larger sum than that fixed by the court of first instance, the court-fee will be paid on the relief which is liable to pay the higher fee; on the former the fee would be computed in accordance with the provisions of clause (ix) of

s. 7 read with Article 1 of Schedule I and on the latter the court-fees would be *ad valorem* on the difference between the amount found due by the lower court and that claimed by the appellant.

**Lahore.**—The Lahore High Court has held that where the mortgagee appeals against a decree in a redemption suit contesting not only the finding of the lower court as to the amount payable by the mortgagor before he can redeem the mortgage but also that the transaction is a sale and not mortgage as held by the lower court, court-fee is payable on the principal sum secured on the mortgage and not on the amount claimed. *Abdul Aziz v. Rahmatulla*, 1933 Lah. 155.

**Allahabad** —In *Raghubir Prasad v. Shankar*, 36 A. 40 (F. B.) it was held modifying the rule in *Baldeo v. Kalka Prasad*, 35 A. 94 that the provision of paying court-fee on the principal mortgage money is limited to suits. The principle was laid down as follows: "The criterion laid down in s. 7 para ix of the Court-Fees Act for determining the court-fees payable in respect of a suit for redemption or foreclosure does not apply to appeals in such suits. In case of appeals or cross objections in suits for redemption or foreclosure, in all cases in which the amount declared by the court to be due at the date or the decree can be ascertained by reference to the judgment and the decree, it is that amount at which the appeal or cross objections should be valued." See also *Prag v. Bhagwan Din*, 47 A. 926, where the question for decision was the amount of fee payable in a memorandum of appeal by a plaintiff whose suit for foreclosure of a mortgage has been dismissed. *Ragubir Prasad v. Shankar Baksh*, 36 A. 40 F. B. was a case of cross objections by the defendant asking that a foreclosure decree should be set aside and the suit dismissed. The Full Bench held that the fee prescribed by s. 7 clause (ix) applies only to suit which is instituted in the court of first instance. In the case of an appeal the court-fee payable is an *ad valorem* court-fee on the value of the subject-matter of the appeal (*Vide* Schedule I Art. 1.) Though the Full Bench dealt with cross objections by the defendant and not with an appeal by the plaintiff, the principle on which that decision rests is equally applicable to those cases.

**Patna.**—A similar view was taken also by the Patna High Court where it was held that in appeals from original decrees the court-fee is leviable on the sum due at the date of the original decree. In second appeal the court-fee is leviable on the sum due at the date of the decree of the lower appellate court. *Rowlins v. Lachimi Narani*, 3 Pat. L. J. 443.

**Valuation where the subject-matter in appeal is only a portion of the mortgaged property.**—Where in an appeal from a foreclosure decree, the appellant seeks exoneration of any property from liability under the decree, the relief sought is not merely declaratory, but a consequential relief of exemption of specific property from the scope of the decree is definitely claimed and therefore a fixed

court-fee as for bare declaration is not sufficient. *Ad valorem* court-fee is payable on the value of the property in respect of which exemption is sought if it be less than the principal sum or decretal debt, or on the principal sum or decretal debt not exceeding the value of the property. *Punjari v. Ramchand*, 1928 Nag. 316 = 111 I. C. 650. According to the reasoning of the decision, a similar rule will hold good where the appellant wants to make an excluded property liable under the decree.

But the view of the High Court of Madras as expressed in *Vasudeva v. Madhava*, 16 M. 326 is different. That was a suit to redeem certain land on payment of a specified amount, being a quarter of debt for which it had been mortgaged together with other land. A decree was passed for redemption of part of the land, but the court held that the plaintiff had not established his right to redeem the rest. The plaintiff appealed to the High Court paying *ad valorem* court-fees computed on the value of the land exonerated. It was held that *ad valorem* court-fee should be computed on one-fourth of the mortgage debt, which is practically the principal amount so far as that suit was concerned.

Though the decision in 16 M. 326 is a direct authority on this question, the suit being in that case one for redemption there are two other decisions of the High Court of Madras that may well be referred to in this connection. *Venkappa v. Narasimha*, 10 M. 187 is one of them. That was a suit on a mortgage bond and a decree was passed for payment of principal and interest and in default for sale of the mortgaged property. Some of the defendants filed a memorandum of appeal against so much of the decree as declared the liability of the property affixing a stamp of Rs. 10 only. It was held that the proper stamp to be paid was not Rs. 10 as in the case of a declaratory decree, but on the value of the debt not exceeding the value of the property. The other decision is *Kesavaraju Ramakrishna v. Kotta Kota Reddi*, 30 M. 96 F. B. There also the suit as in the 10 Madras Case was by the mortgagee. It was held that where the appellant in an appeal against a mortgage decree does not dispute the amount decreed but raises the question of the liability of certain properties for the decree amount the value of the appeal for the purposes of court-fees under Sch. I, Art. 1 of the Act is the value of such properties, when such value is less than the amount decreed, and when such value exceeds the amount decreed, such decree amount."

It is submitted that the principle underlying these two decisions in 10 Madras and 30 Madras could be equally applied to appeals in redemption suits. The decision in 16 M. 326 which takes a contrary view appears to be inequitable as laying an unnecessary burden on the appellant in a suit for redemption. This is well brought out in the decision in 111 I. C. 650 quoted below. There does not seem to be any difference in principle between an appeal arising out of a suit brought by the mortgagee and an appeal arising out of a suit brought

by the mortgagor and the equitable principle laid down in 30 Madras could well be applied to appeals arising out of redemption suits.

The views of all the High Courts inclusive of that of Madras have been fully considered in the above quoted decision of *Punjari v. Ram Chand*.

**Madras.**—In *Krishnama Chariar v. Srinivasa Ayyangar*, 4 M. 339, it was pointed out that for purposes of jurisdictional value there are two considerations—the amount of the charge, and the value of the property it is sought to make available for the satisfaction of the charge. The judges of the Madras High Court observed in that case that, if the value of the property is in excess of the charge, the value is amount of the charge, for the subject of the suit is the right to make the property available for the satisfaction of the whole charge; but where the value of the property is less than the amount of the charge, the subject-matter is the right to make the property available for the satisfaction of the charge so far as the property will suffice, and it cannot suffice to satisfy more than a sum proportionate to its value. Consequently in such cases, the value of the subject-matter is the value of the property. This view was accepted by Ismay, J. C., in *Mojiram v. Nandram*, 16 C. L. R. 161, in which also the question was as regards the jurisdictional value of the claim.

The principle laid down in the aforesaid Madras case was extended with approval by the Full Bench of the Madras High Court itself in *Kesavaraju Ramakrishna Reddi v. Kotta Kotta Reddi*, 30 M. 96 = 16 M. L. J. 458, even to a case in which they had to determine the value of the subject-matter in dispute in appeal for purposes of court-fees payable on the memorandum of appeal. Another previous decision of the same High Court reported as *Venkappa v. Narasimha*, 10 M. 187, was also noticed with approval and accepted as laying down a correct principle of law. In *Venkappa v. Narasimha*, 10 M. 187, the decree directed the payment of a certain amount, and in default that the lands of the defendants be sold and the sale proceeds applied to the payment of the debt. Some of the defendants appealed against so much of the decree as declared the liability of their property and prayed that the same may be released from the decree; it was held that the relief sought was not merely declaratory but one for exoneration of the appellants' land from liability and that the proper stamp to be paid on the memorandum of appeal was not Rs. 10 as in a declaratory decree, but a fee calculated on the value of the debt not exceeding, however, the value of the property. According to the Madras High Court then, the relief of exemption of property is not merely declaratory and the value of the debts or the value of the property whichever is less, determines the value of the relief in appeal for purposes of court-fees in such cases.

**Calcutta.**—This view was accepted by the Calcutta High Court in *Jagadhar Narayan Prasad v. Brown*, 33 C. 1133, and *Bibi Gumbal Batul v. Nanji Koer*, 11 C. W. N. 705 and also in *Jagad*



*Prasad Singh v. Parbu Narayan Ja*, 37 C. 914=8 I. C. 1145, where it was held that where the appellant in an appeal against a mortgage decree does not dispute the amount decreed but raises the question of the liability of certain properties, the value of the appeal for the purpose of court-fees is the value of such properties. Schedule II, Article 17, clause vi of the Court-Fees Act (VII of 1870) has no application to such a case. The reason is obvious; it cannot be said that the value of the subject-matter in dispute in appeal cannot be estimated.

**Allahabad.**—In *Khachera Singh v. Kharag Singh*, 33 A. 20=7 I. C. 315, where the decision of Madras Full Bench was followed, it was held that the court-fee should be paid on the value of the property sought to be rendered liable in appeal. A decision reported as *Tharumal v. Chandu Ram*, 11 P. R. 1916=33 I. C. 138, is to the same effect. In it also a court-fee of Rs. 10 was held insufficient.

**Patna.**—*Modho Roy v. Bibi Mahbywan Nisa*, 5 Pat. 721=1927 Pat. 46=98 I. C. 807, was a case in which a purchaser of a mortgaged property had appealed claiming exemption of his properties from liability under the decree; it was held that if the value of the properties purchased by the appellants was less than the decretal amounts, an *ad valorem* court-fee on the value of the properties was payable, but if the value of such properties was not less than the decretal amounts, an *ad valorem* court-fee on the decretal amounts was payable.

**Lahore.**—In *Atma Singh v. Nathu Mal*, 7 Lah. 215=1926 Lah. 408=96 I. C. 473, the Lahore High Court also took the same view.

“It is thus clear that where in appeal the appellant seeks exoneration of the property from liability under the mortgage decree or wants the appellate court to make the excluded property also liable under the decree the relief sought is not merely declaratory, but that a consequential relief of exemption of specific property from, or inclusion within, the scope of the decree is definitely claimed and therefore, a court-fee of Rs. 10 is not sufficient. It is the value of the debt or the value of the property, whichever may be less, that determines the value of the relief in appeal for purpose of the Court-Fees Act.

“The decision of this court (Nagpur Court) reported as *Ghasi Ram v. Lila Dhar*, 9 N. L. R. 86=20 I. C. 257, is to the effect that where in appeal there is no dispute as to the price of redemption and the dispute is confined entirely to the right to foreclose and that only in respect of a portion of the property, the correct valuation for the purpose of calculating the court-fee of the claim in appeal is the principal sum secured in the mortgage. The reasoning on which this conclusion is based is thus stated at page 88 of the report: ‘It cannot with any show of reason be stated that the fact of the dispute relating to only a portion of the property makes any difference that would result in demanding more for a less valuable claim. If in this case,

the claim in the lower court has been foreclosure of the quarter of the property which has been declared liable or the remainder that has been declared not liable, the assumed value of the claim for the purpose of calculating the amount payable as court-fees on the plaint would have been still the principal sum secured by the mortgage, and that valuation would, as explained in *Dhiraj Singh v. Raja Ram*, 8 I. C. 1125 be the correct valuation in appeal'. With all due deference, I think, I must refrain from accepting such a construction, because unless the language of a fiscal enactment like the Court-Fees Act is clear and unambiguous so as to entitle the court to levy higher duty on a relief, it must be construed very strictly and not in a manner, that would result in demanding more court-fee for a less valuable claim. If the value to the appellant is the test, as I think it ought to be, then it follows that the valuation of the subject-matter in dispute in appeal must be determined with reference to the amount at which he values the prejudice caused to him by the decree he appeals against. If he appeals against only that part of the decree which injuriously affects him, or his interest and he finds that the said injury is fully remedied, either by including or exonerating certain property, within or from the scope of the decree, or by reducing or enhancing the amount of the decree, as the case may be, and if the value of such a relief is capable of being estimated in money, I do not see any valid reason why the "assumed" value for purposes of court-fees should continue to be a constant factor even at the stage of appeal as observed in *Dhiraj Singh v. Raja Ram*, 8 I. C. 1125. It is very likely that in some cases the amount of the liability may be less than the value of the property and in others the value of the property may be less than the amount of the debt. To levy court-fee on the lesser of the two values would be consistent with the principle underlying the Court-Fees Act as also the reported cases referred to above. It would be unjust to call upon an appellant to pay court-fee on the value of the property even if the debt from the payment of which he seeks exemption, be less than the price of his property. Similarly, it would be inequitable to demand court-fee with reference to the value of the entire debt, even though the debt or the proportion chargeable against any property be less than the value of the whole or portion of the property sought to be charged with or exempted from liability under the decree. It sometimes happens that by reason of repayments admitted or held proved or for other reasons such as reduction of interest, etc., the debt is reduced by the court to an amount below even the principal sum secured by the mortgage. If in such a case, the property or any portion thereof sought to be exonerated or included be worth much more than the decretal debts, there is no reason why an appellant interested in procuring such exemption or inclusion of property or its portion, from or within the operation of such decree, should be made to pay court-fee on the principal sum secured by the mortgage. If this court in laying down the rule in *Dhiraj Singh v. Raja Ram*,

8 I. C. 1125 that the principal sum secured by the mortgage shall determine the value of the subject-matter in dispute in appeal where the right to foreclose is disputed, and in extending that rule in *Ghasi Ram v. Dilla Dhar*, 20 I. C. 257 to cases where the right to foreclose is in dispute only as regards certain property, meant to favour as I think it did, the adoption of the principle that the court-fee should be levied on the least amount recoverable on the basis of the mortgage, namely, the principal sum as the assumed value of the debt, then, I think it is open to me to hold by extending the operation of the same principle that court-fee should be levied not necessarily on the principal sum but on the principal money secured by the mortgage or the decretal debt, or the value of the property—which ever may be less according to the circumstances of each case.” See *Punjari v. Ram Chand*, 1928 Nag. 316.

**Summary.**—The following rules could well be deduced from the foregoing decisions.

1. Where the right to redeem or foreclosure, etc., is a matter of controversy, and the *sole* matter in controversy and forms the subject-matter of appeal, then the value of the appeal must be taken to be value of the suit which is again the amount of principal money secured by the mortgage. *Dhiraj Singh v. Rajaram*, 6 N. L. R. 194 (F.B.); *Sekharan Nair v. Eacharan Nair*, 20 M.L.J. 121 = 3 I.C. 459.

But the view of the Allahabad and Patna High Courts is that the fee is payable on the amount found actually due, by one party to the other. See 47 A. 926 and 3 Pat. L. J. 443.

2. Where the appellant seeks exoneration of any property from liability in an appeal against a decree for foreclosure the value of the appeal is the value of the property sought to be exonerated or the debt whichever is less.

3. Where the appellant in an appeal in a redemption suit seeks to redeem any property for which redemption has not been allowed by the decree, he must value the appeal according to the value of the property sought to be redeemed or the debt whichever is less. But the Madras view seems to be different. See the decision in 16 M. 326 commented on above.

4. When the controversy is not about the existence or non-existence of the right to redeem or foreclose, but relates *only* to the amount directed to be paid by the mortgagee as surplus profit or rent payable by him or by the mortgagor as a condition precedent to the redemption decree in his favour the subject-matter is an ascertained amount and a claim for money and *ad valorem* fee is payable thereon under Article 1 of Schedule I.

5. Where the controversy in appeal relates not only to the right to redeem or foreclose but also about the amount payable by the mortgagee to the mortgagor or *vice versa*, the view of the Madras High Court as expressed in *Sekharan v. Eacharan*, 20 M.L.J. 121 =

3 I. C. 459, is that where the mortgagor plaintiff whose suit has been dismissed urges in appeal his right to redeem and also contests a finding of the trial court about the amount payable by them as a condition precedent to his redemption, the nature of the suit in appeal is not altered and the appeal memorandum has to be valued "as in the case of the plaint, as otherwise there is no provision in the Court-Fees Act for valuing it." But the view expressed in *Sangat Baksh v. Rawat*, 25 O. C. 30 is different. It states that "where a decree has been passed for redemption on payment of a certain sum and in appeal the defendant not only denies the plaintiff's right to redeem but in the alternative claims that if he be entitled to redeem he can do so only on payment of a larger sum than fixed by the lower court, the court-fee will be paid on the relief which is liable to pay the higher fee". The view of the High Courts of Allahabad and Patna is however that the fee is payable on the amount ascertained as due by the lower court.

### **Certain specific instances of appeals.**

**1. Appeal against conditional decree for foreclosure.**—In a suit for foreclosure a decree was passed in favour of the plaintiff conditionally on his redeeming a prior mortgage by paying a specified sum. The plaintiff appealed assailing the validity of the prior mortgage and stamped his memorandum of appeal with an *ad valorem* court-fee on the amount of the principal sum of money secured by the prior mortgage. It was held that the proper amount of court-fee payable was an *ad valorem* court-fee on the amount which the plaintiff had been ordered to pay to the prior mortgagee. *Baji Lal v. Govardhan*, 21 A. 265.

**2. Appeal against decree for redemption and mesne profits.**—Where a decree has been given for mesne profits as well as for redemption, the appeal must be stamped for both the reliefs. *Ram Chand v. Bhagwan Das*, 1935 Pesh. 8.

**3. Appeal against preliminary decree alone where a final decree had been passed.**—The plaintiff obtained a preliminary decree in a redemption suit. Then a final decree was passed requiring the plaintiffs to pay a sum of Rs. 8,000. The plaintiffs appealed against the preliminary decree only, on a court-fee stamp of Rs. 10 although their objection was about the amount which they were decreed to pay by the final decree. It was held that inasmuch as the dates permitted the appellant to challenge both the preliminary and the final decree within the time allowed by law for an appeal against the preliminary decree the court could not permit them to avoid the provisions of the Court-Fees Act by getting what might or might not be an effective reversal of the final decree by a circuitous method when the direct method was open to them. *Dattaya Ramachandra v. Ajimuddin*, 18 Bom. L. R. 76.

**4. Appeals in a suit where two preliminary decrees were passed.**—This is an instance of rather an unusual case. The

court of first instance in a suit for redemption of a mortgage passed in effect two preliminary decrees. It first passed a decree declaring the plaintiff's right to redeem, which was denied by the defendants, against which the defendants filed an appeal, and while this appeal was pending a second preliminary decree deciding the amount on payment of which redemption might take place was passed. Against that decree the defendant appealed. It was held that the two appeals were not to be regarded as separate appeals for the purpose of assessing court-fee but should be counted as one. *Lalita Prasad v. Sheoraj Singh*, 39 A. 452.

### 5. Appeal against final decree in foreclosure suit.—

In an appeal against a final decree for foreclosure, it was held that the final decree under O. 34, r. 3 of the Civil Procedure Code equally stops the litigation as the final decrees for sale under O. 34, rr. 4 and 5 and the appellant should pay court-fees as in any other appeal from a final decree. *Balaji v. Ballakdas*, 1928 Nag. 146. Where a final decree was passed in a foreclosure suit under O. 34 r. 3, C. P. C., the appeal is to be treated as an appeal from a decree and the appeal has to be stamped with an *ad valorem* fee. *Ram Dhani v. Chowdhury*, 30 I. C. 492. Where an appeal was preferred from a decree in a foreclosure suit to the effect that the amount to be paid to the mortgagee should be reduced, the appeal must be stamped with *ad valorem* fees under Article I Schedule I on the amount by which the amount fixed in the decree as payable is sought to be reduced. *Oukar v. Lukmichand*, (1909) 5 N. L. R. 130. This principle was extended to the converse case of a mortgagee decree-holder appealing for enhancement of the amount decreed as payable to him by the trial court. *Basdev v. Dayaram*, 29 I. C. 609.

**6. Separate appeals by the mortgagors.**—A decree having been passed by the lower court in a redemption suit, directing that the mortgage property should be redeemable on payment of the amount expressed to be secured by the mortgage deed, *viz.*, Rs. 1,152 to the defendants, Rs. 584 to one and Rs. 568 to the other and each of the defendants preferred a separate appeal, it was held that the court-fee to be computed in each memorandum of appeal should be according to the principal money expressed to be recovered by the deed of mortgage. *Uma Karan v. Mohamed Khan*, 10 B. 41.

**7. Appeals both from the preliminary and the final decree.**—In a suit for redemption where a preliminary decree was first passed fixing the amount payable and then a final decree, if appeals are preferred from both decrees asking for a reduction of the amount fixed in the preliminary decree and *ad valorem* court-fee has been paid on the appeal from the preliminary decree on the amount of reduction, a court-fee stamp of Rs. 2 is sufficient on the appeal from the final decree. *Budha Ram v. Niamat Rai*, 4 Lah. 406.

**8. Appeal against decree for improvements.**—In a suit for redemption of a *Kanom* the plaintiff obtained a decree subject to payment of the value of improvements. The plaintiff appealed against the value allowed for improvements. It was held that the court-fee payable on the appeal must be determined in accordance with the value of the improvements which the appellant seeks to avoid. *Tiruvengalath Paidal Nayar v. Emperor*, 22 I. C. 624=1926 Mad. 225.

**9. Appeal for relief under the Dekhan Agriculturists Relief Act.**—An appeal by a defendant from a decree in a mortgage suit claiming relief under the Dekhan Agriculturists Relief Act is covered by cl. (ix). *Mahomed Ali v. Akbar Ali*, 36 Bom. L. R. 1234 = 1935 Bom. 69.

## PARAGRAPH X: SUITS FOR SPECIFIC PERFORMANCE.

**Application.**—This clause provides for suits for specific performance for the enforcement of a contract of (1) sale, (2) mortgage, (3) lease, and (4) an award.

**Clause (a). Contract of sale.**—Where the suit is one for specific performance of a contract of sale, the fee payable is according to the amount of the consideration. *Shiv Dial v. Shiv Ram Rao*, 1928 Lah. 635 = 111 I. C. 72.

**Suit for specific performance alone.**—A suit praying for specific performance of a contract of sale, pure and simple, without the addition of any other relief falls within this clause. *Nahal Singh v. Seva Ram*, 38 A. 292. This usually happens in cases where, by virtue of the agreement to sell or otherwise the plaintiff is already in possession of the property contracted to be purchased by him and the plaintiff need therefore ask only for the sole relief of specific performance in order to get a legal title to the property. See *Fakir Chand v. Ram Dutt*, 5 L. 75 = 80 I. C. 953 = 1924 Lah. 439

**Specific performance coupled with other reliefs.**—There is a conflict of authorities as to the fee leviable where the suit is one for specific performance of a contract of sale, coupled with a relief for recovery of possession of the property. At the outset it has to be noticed that, strictly speaking, it is only after the execution of a conveyance, the plaintiff gets the title to the property, in view of the provision in s. 54 of the Transfer of Property Act (IV of 1882) that a contract for the sale of immoveable property does not of itself create an interest in such property. A contractee for the purchase of immoveable property has therefore only an inchoate right to get a conveyance executed in his favour and it is only on the execution of a proper conveyance that his title to the property matures. Consequently, the decision in *Narayana Kaxirajan v. Kandaswami*, 22 M. 247, where it was held that a plaintiff in a suit for

specific performance of a contract to sell land must also seek for possession failing which his further suit for possession is barred under O. 2, r. 2 of the Civil Procedure Code is not good law. *Krishnammal v. Soundararajayyar*, 38 M. 698; *Krishnaji v. Angappa*, 27 Bom. L. R. 42. For the reasons already stated the only natural doubt that could arise if at all is whether the plaintiff can combine in one suit his claim for specific relief and possession. As was observed in *Bugata Apala Naidu v. Chengalva Yogi Raju*, (1916) 1. M. W. N. 77 it is the practice of the courts in Madras to allow a claim for possession to be included in a claim for specific performance of the contract of sale and their Lordships declined to interfere with such practice. This course was followed for the sake of convenience and to avoid multiplicity of suits and for the reason also that the right of possession also arose out of the contract of sale. *Madan Mohan v. Gaju Prasad*, 14 C. L. J. 159.

Where the plaintiff files a suit not only for specific performance but also for possession, the question arises as to the section or sections under which the fee is to be computed. Two sets of cases can well be conceived. (1) Where of the two reliefs of specific performance and possession one is auxiliary to the other. For an instance of the relief as to possession being held to be auxiliary to that of specific relief in a suit where both reliefs have been claimed, see *Nihal Singh v. Seva Ram*, 38 A. 292=35 I. C. 275: Tudball, J., has observed as follows: "As stated by a Bench of this court, in *Mahiuddin Ahmed v. Majib Rai*, 6 A. 231, the suit for specific performance of a contract and possession is in substance one for specific performance of a contract and falls *prima facie* under s. 7 para (x) of the Court-Fees Act. I have no hesitation in accepting this as the true solution of the case for one simple reason, *viz.*, when a vendor contracts to sell, he contracts as laid down in s. 55 of the Transfer of Property Act to execute a proper conveyance of the property to the buyer and tender it to him on execution at a proper time and place, on payment of the amount due in respect of the price. He also contracts to give the buyer or such person as he directs such possession in the property as its nature admits. The plaintiffs in the present case are clearly seeking to enforce the contract of sale, and they also seek from the vendor to do that which he is bound to do under the contract, *viz.*, to execute and register a sale deed and to hand over possession of the property. The suit is one in form and substance a suit for specific performance." This is also the view of the High Court of Madras in *Sundara Ramanuja Naidu v. Sivalingam Pillai*, 47 M. 150=1924 Mad. 360=77 I. C. 542. It was held that a suit to enforce specific performance of a contract to sell land and for possession of the property is a suit for specific performance falling under para x (a); and does not fall under para v (e) nor does it comprise two or more distinct subjects, within the meaning of s. 17 of the Act. The delivery of possession is only a part of the specific performance of the contract of sale unless there is

a clear indication that the statutory obligation under s. 55 of the Transfer of Property Act is not to flow from the contract. See also *Kundan v. Anand Sarup*, 73 I. C. 709=1923 Lah. 456.

The converse view is to hold the relief for specific performance to be subsidiary to that of possession. Where the plaintiff sued for specific performance and possession it was held in *Madan Mohan v. Gaja Prasad*, 14 C. L. J. 159=11 I. C. 228, that the suit was in substance one for possession of the property and ought to be valued under clause v of the Act according to the value of the subject-matter of the suit. This was followed in *Nathekhan v. Mahomad Khan*, 46 I. C. 534 (Pun.) It was observed: "The question of the court-fee payable in such cases does not appear to be by any means clear. The main relief asked is for specific performance of the contract by execution of a sale deed and the claim for possession appears to be subsidiary to the main relief." This was again followed in *Gopal Das v. Paramanund*, 60 I. C. 512 (Pun.)

But these decisions have been fully discussed and dissented from in *Sundararamanujam v. Sivalingam*, 47 M. 150=1923 Mad. 360. The Madras decision was followed in *Sivdayal v. Sivaram Das*, 1928 Lah. 635. This was a suit for specific performance of contract of sale and for possession of land. Following the decision of *Fakir Chand v. Ramdatt*, 5 Lah. 75=1924 Lah. 349 and *Sundararamanujam v. Sivalingam Pillai*, 47 M. 150=1924 Mad. 360, it was held that in a suit for specific performance of a contract for sale of land the proper valuation is the price agreed to be paid. The earlier cases in Lahore *Gopal v. Paramanand*, 60 I. C. 512 and *Nathe Khan v. Mohomed Khan*, 45 I. C. 534 were not approved. The PATNA High Court follows the view of the CALCUTTA High Court and holds in *Ram Bahadur v. Banwarilal*, 118 I. C. 134=1929 Pat. 642, that a suit for specific performance of a contract to sell immoveable property and for recovery of possession of the same should be valued under s. 7 cl. v.

In the above said two sets of cases there is a divergence of views as to whether the relief for specific performance is to be subordinated to the relief for possession and *vice versa*. The view of the High Courts of ALLAHABAD, MADRAS, and LAHORE is to the effect that such suits fall under x (a), while the view of the High Courts of CALCUTTA and PATNA is that clause v is applicable.

**Oudh.**—The second set of cases arises where the second relief sought is not treated as merged in the other, but both construed to be independent reliefs where commulative fee is leviable. This is the view taken in *Ram Niti v. Bulkaram Singh*, 23 O. C. 388=60 I. C. 959. In that decision the earlier view of the Madras High Court in *Krishnesam v. Sundarappayyar*, 18 M. 415 was approved of and the decision of the Calcutta High Court in *Madan Mohan v. Gaja Prasad* 11 I. C. 228, was dissented from. There is further a fuller criticism of the decision of the Allahabad High Court. *Nihal Singh v. Seva*



*Ram*, 38 A. 292 which was not followed for the reasons set out hereunder. “Tudball, J., held that the real relief was that of specific performance and that in both reliefs the plaintiffs were merely seeking to force the vendor to do what he was bound to do under the contract, *viz.*, to execute and register the sale deed and to hand over possession of the property. This view was the exact opposite of that taken by the lower court in this case, which is that the relief for specific performance is auxiliary to that of possession. If it was part of the plaintiff’s case as stated in the plaint that the seller had contracted to deliver possession, and that possession was ordered for in performance of the contract, I should be prepared to follow this ruling. There is no allegation of an agreement to put the plaintiff in possession. No doubt the law as laid down in s. 55 (f) of the Transfer of Property Act imposes an obligation to put the buyer or his representative in possession, but it is a conditional obligation taking effect on the request of latter, and in favour either of the buyer himself or such other person as he may direct. A claim to possession is not a necessary incident of a suit for specific performance of a contract of sale. The property may already be in the possession of the vendee and under some other title; or it may be in possession of a third person, such as a mortgagee; or the parties may have stipulated that possession should be deferred. In this case therefore I hold that a separate court-fee is payable on each relief.” From this decision it follows that in every suit for specific performance and possession, the plaintiff should pay the requisite fee under both the clauses x and v. The proper view, it is submitted, is to restrict the application of this decision to cases where the two reliefs of specific performance and possession are quite independent and distinct and one cannot be said to be auxiliary to the other.

**Suit against party to contract and others.**—There are cases where a suit for specific performance and possession is brought not only against the actual party to the contract but also against other persons who are arrayed as co-defendants along with the contracting party either on the ground that they are sought to be bound by the contract or that possession of the property is with them, and so forth. It may be that such third parties who are impleaded contest the right of the plaintiff to get the relief for possession as against them and in such case, the suit is a complex one really comprising two distinct subjects which could well form the subject-matter of two different suits. It cannot be contended in such cases that the relief as to possession could be granted automatically to the plaintiff, if the other relief as to specific performance is decreed in his favour. The real test appears to be whether there is any distinct or separate controversy as regards the relief as to possession forming a subject-matter to be inquired into and decided in the suit, or whether the relief is a mere appendage to that of specific performance and when the one is granted the other follows as a matter of course. If it does not, then, relief for possession is a distinct entity by itself: and the view set out in *extenso*

in 60 I. C. 959 seems to be the proper view. But it is submitted that the view therein expressed cannot be made to apply indiscriminately to each and every case where the dual relief is prayed for. For instance in *Nihal Singh v. Seva Ram*, 38 A. 292, the plaintiffs alleged that defendants 2 and 3 having contracted to sell certain property to them and received part of the price, thereafter sold the same property to first defendant who had notice of the agreement with the plaintiffs and they asked (1) that the defendants 2 and 3 might be compelled to complete the sale to the plaintiffs and (2) for possession of the property. It was held that the suit was really one for specific performance of a contract and the court-fee thereon was assessable under s. 7 clause x of the Act. See also *Krishnaswami v. Sundarapayyar*, 18 M. 415.

For purposes of court-fee under s. 7 para x an exchange is to be dealt with as a sale. *Kundan Lal v. Anund Sarup*, 1923 Lah. 456. But the correctness of the decision is perhaps open to question. Section 54, T. P. Act, defines a sale as a transfer of ownership in exchange for a price paid or promised. For the meaning of the word "price" see 2 Luck. 575. It must consist of money and where it consists of any other thing it is not a sale. 1927 Oudh 204. Consequently an exchange could not be deemed to be a mutual sale. And further the value of the property could not be ascertained from the deed of exchange.

**Summary.**—The net result of the several conflicting decisions and views above may be stated thus. Where the plaintiff sues for specific performance and possession, it has first of all to be determined as to whether there is any real controversy as regards the prayer for possession. If there is, then a cumulative fee is payable under paragraphs (x) and (v). If there is no such controversy, then the relief as to possession is really auxiliary to that of specific performance. This occurs in most cases where the suit is against the contractee for possession. In such cases there is either a contract to deliver possession or such a contract is implied under s. 55 (f) of the Transfer of Property Act in the absence of a contract to the contrary. Thus in all cases, where there is no contract to the contrary, the plaintiff's suit for specific performance and possession is in substance only one for specific performance and in cases where there is a contract to the contrary it is obvious that there would be no suit for the additional relief of possession along with that of specific performance. Much of the controversy and divergence of views could well have been avoided if the intention of the legislature was expressed with greater clearness in para (x) to the effect that it applies also to cases where the additional relief of possession is claimed, in cases covered by s. 55 of the Transfer of Property Act which in any event must be read along with para x (a). The necessity for such clearness is all the more imperative in view of the existence of clause (v) which is wide enough to cover all cases wherein the relief of possession is sought.

**Certain specific cases.**—The following cases have been held not to fall under this clause.

1. A suit for a declaration that the plaintiff purchased the property in the name of the defendant benami for himself and praying that the defendant may be directed to convey the same to plaintiff. *Dade v. Nagesh*, 23 B. 486.

2. A suit for the specific performance of a contract of guarantee and for the restoration of a village or for damages in the alternative was held to fall under clause (1). *Nanda Singh v. Sundar Singh*, 97 P. L. R. 1901.

**Clause (b). Mortgage.**—Suit by usufructuary mortgagee to recover possession of garden mortgaged on the ground of ouster falls under clause (v) and not under this clause. *Chellammal v. Fazul Bi*, 33 P. R. 1880. See also under cl. v.

**Clause (c). Lease.**—This relates to a contract of lease. The valuation is according to the fine or premium if any and the rent agreed to be paid during the first year of the term. Compare the provisions of Schedule I Article 35 of the Indian Stamp Act (II of 1899). A suit by a lessee for recovery of land comprised in his share but of which possession was not given to the lessee is only a suit for possession of land under paragraph (v) and not a suit for specific performance. *Ghulam v. Narain*, (1908) A. W. N. 201; *Param Sukh v. Sheo Murat*, 1933 Oudh 363.

**Clause (d). Award.**—This applies to cases where the suit is one for specific performance of an award. *U Thi Ha v. U Thudathana*, U. B. R. (1909) 2nd Quarter. Where in pursuance of an agreement to refer to arbitration, the court appointed arbitrators and an award was passed which was attacked by the parties on the allegation of the misconduct of the arbitrators, and the award was set aside and the parties preferred an appeal under s. 104 of the Civil Procedure Code, it was held that the fee payable was not computable under this clause but under Article 17 (vi) of Schedule II. *Ram Jaway v. Devi Ditta*, 34 I. C. 192=117 P. R. 1916.

For the law governing arbitration and awards, see the Indian Arbitration Act IX of 1899 and the second schedule of the Code of Civil Procedure. Of course if the reference is through the intervention of the court there is a pending proceeding in the course of which an award is passed and there need be no suit for specific performance of the award. But where the arbitration is without the intervention of a court and an award is passed then any party could move the court for filing it to be made a decree of the court. See paragraph 20 of the Second Schedule of the C. P. C. But such an application can be made only within six months of the date of publication of the award (not the date it was delivered to parties *vide* Art. 178 Sch. I of the Limitation Act), *Kunja Lal v. Bunwari Lal*, 4 Pat. L. J. 394=48 I.C. 711, and the court-fee thereon will have to be paid under Article 1 Schedule II of the Court-Fees Act. But para 20 of the Second Sche-

dule to the Civil Procedure Code is no bar to a regular suit to enforce an award. Under the Code of 1882, s. 525, it was held that a party interested in an award may at his option avail himself of the summary remedy provided by that section to enforce the award or he may bring a regular suit to enforce the award, 20 M. 490. There is nothing in the Code of 1908 to preclude such a suit. See s. 89 of the C. P. C. Consequently either because an application is out of time or otherwise, a suit may be filed for which the period of limitation is that under Art. 113. There is a difference of opinion as to whether an award is a contract at all. See 51 I. C. 999. "Though an award springs from an agreement it is not itself a contract and hence a suit to enforce an award is not a suit for specific performance of a contract." *Bhagbari v. Behary*, 33 C. 881; *Sornavalli v. Muthayya*, 23 M. 593. Of course there are decisions under the Limitation Act and the question arises whether Art. 113 or 120 applied to such suits for specific performance. But so far as the Court-Fees Act is concerned the paragraph relates to suits for specific performance though it might be noticed that while in respect of the clauses (a), (b) and (c) viz., a sale mortgage and a lease the word "contract" is used, that word is omitted in clause (d) relating to an "award" for obvious reasons. The only point noticeable is that where an application to file the award is not made under paragraph 20 of Schedule II of the C. P. C., in which case the fee is leviable only under Art. 1 Sch. II of the Court-Fees Act, but a suit is filed, the fee is leviable under this paragraph according to the amount or value of the property in dispute.

**Valuation for jurisdiction.**—Under s. 8 of the Suits Valuation Act, the valuation of suits for court-fees and jurisdiction is the same except in the cases therein excepted. And suits under paragraph x clause (d) fall within the category of excepted suits. Consequently the valuation of suits under clauses (a), (b) and (c) of this paragraph is the same as that for court-fees but in the case of suits under clause (d) the value may be different. See *Syed Ashfaq Hussain v. Syed Bunyad Hussain*, 77 I. C. 874=1923 Oudh 252 (case of contract of sale); *Sailendra Nath Mitra v. Ramcharan*, 65 I. C. 268 (contract to lease).

## PARAGRAPH XI SUITS BETWEEN LANDLORD AND TENANT.

**Suits by landlord against tenant and vice versa.**

**Suits by landlord** are dealt with in sub-clauses (a), (b) and (cc).

**Suits by tenant** are dealt with in sub-clauses (c), (d), (e) and (f).

**Scope of the paragraph.**—The primary requisite for its application is the existence of the general relationship of landlord and tenant. A general suit for possession for instance based on title and not on a contract of tenancy will have to be brought under paragraph (a) instead of under clause (cc) of the paragraph which will apply only

in case the basis of the suit in ejectment is a lease. Hence it was held in *Hira Lal v. Surendra Nath*, 1929 Cal. 504=91 I. C. 488, that where the suit is based on title and a declaration is sought that the defendant is a trespasser the suit did not fall within this paragraph. All the several classes of suits contemplated by this paragraph are only suits that flow out of the relationship of landlord and tenant. The rights and liabilities of a lessor and lessee are generally set out in the Transfer of Property Act. In the case of estates in Madras, the Madras Estates Land Act, Act I of 1908 applies and in the case of other provinces the Bengal Tenancy Act, Agra Tenancy Act, C. P. Tenancy Act, etc.

**Agra Tenancy Act.**—A tenant suing under s. 95 of that Act for declaration of his status as an occupancy tenant must pay a court-fee of 8 annas on the plaint under Schedule II Article 5 of the Court Fees Act. Section 7 clause xi does not apply to such a suit. *Ratan Singh v. Khan Karan*, 40 A. 358=44 I. C. 608. But a suit for possession by a tenant against his landlord falls within sub-clause (e). 16 C.L.J. 375.

**Tenant at will.**—In a suit to eject a defendant as being a tenant at will, the court-fee upon the plaint or memorandum of appeal is leviable under Schedule II clause 5 of the Act. *Bebi Nurjahan v. Morfan Mundal*, 11 C. L. R. 91. This decision was referred to in *Brahmayya v. Lakshminarasimhan*, 15 M. 310, where it was held that a memorandum of appeal from a decree directing ejectment and awarding mesne profits was chargeable under s. 7 Court-Fees Act and not under Schedule II as in the Calcutta decision. Of course after the insertion of clause (cc) in para ix, by Act VI of 1905, that clause is applicable to such cases.

### Clause (a).

This applies to a suit by a landlord for a direction to the tenant to deliver the counter part of a lease. Under the Madras Estates Land Act the counter part is called a Muchilika, while that issued by the landlord to the tenant is termed a Patta. Section 50 (2) of the Madras Estates Land Act provides that . . . every landholder shall be entitled to call upon his ryot to give him a muchilika for any current revenue year in exchange for a patta.

Section 56 of the Estates Land Act provides for suits for acceptance of putta and giving of muchalika in exchange. The government has by Notification issued under s. 35 of the Court-Fees Act remitted the fees chargeable in respect of plaints under ss. 55, 56, 95, 112, 144 and 160 of the Madras Estates Land Act. *Vide* exemption No. 35 Appendix. It may be noted that the Government has remitted only the fees payable on plaints in suits and not memoranda of appeals from decrees in such suits. Hence they are chargeable with court-fee.

**Clause (b).**

This refers to a suit by the landlord for the enhancement of the rent payable by a tenant. In Madras s. 24 of the Madras Estates Land Act provides that the rent of a ryot shall not be enhanced except as provided in the Act and provision is made in s. 30, to the effect that where for any land in his holding a ryot pays a money rent the landholder may institute a suit before the Collector to enhance the rent on one or more of the grounds set out in the section.

The words "having a right of occupancy" in this clause connote actual and physical possession. Hence a suit against a ryot under s. 30 of the Madras Estates Land Act is chargeable under this clause. But this clause does not apply to a suit against a mere tenure-holder, who has no right of occupancy, for enhancement of rent, which is governed by Sch. I, Art. I. *Prasannadeb v. Purna Chandra*, 61 Cal. 513 = 38 C. W. N. 527 = 1934 Cal. 674. See also commentary under cl. (e), *infra*.

Court-fees on plaints in suits under s. 30 of Madras Estates Land Act has not been remitted by the Government.

**Clause (c).**

Section 55 of the Madras Estates Land Act provides for such class of suits.

**Clause (cc).**

This clause was inserted by Act VI of 1905. This refers to a suit by a landlord for the recovery of the property from a tenant. As already observed where the basis is the relationship of a landlord and tenant, the suit falls not under para (v) but under this clause. The plaintiff's suit for possession from a tenant may be where the tenancy has terminated or when the plaintiff seeks to enforce his right of re-entry on account of forfeiture incurred by a tenant on account of some breach of covenant. See s. 111 of the Transfer of Property Act (IV of 1882). Where a suit is valued under this clause, the only issues that arise are whether the lease is true and whether the same has been validly terminated entitling the plaintiff to eject. The question of plaintiff's title to the property from which the defendant is sought to be ejected is irrelevant to the enquiry. Compare suits under s. 9 of the Specific Relief Act where also the title is not the basis of the claim but one of the incidents of ownership, *viz.*, possession. Consequently it follows where the plaintiff elects to have a second string to his bow and elects to base his suit on a dual footing *viz.* both on lease and title, the valuation is according to the larger of the two reliefs, one calculated under this clause and the other under paragraph (v) of the section.

Of course it is only the allegations in the plaint that have to be looked to for the computation of the court-fee payable. Merely because the defendant raises the plea that he is an occupancy ryot

*Punyamurthulu v. Sreeramulu*. 52 M. L. J. 100 = 1927 Mad. 331 = 99 I. C. 981, or questions the plaintiff's title, *Balasiddhantan v. Perumal Chetti*, 27 I. C. 102, *Sivasubramania Nadar v. Subramania Nadar*, 138 I. C. 88 = 35 L. W. 393 = 1932 Mad. 409, the suit is not taken out of this clause and the title of the plaintiff should not be gone into and decided. The solitary issue is about the truth or otherwise of the lease and if it is not proved the plaintiff's suit is to be dismissed and if it is proved the defendant is estopped from denying the plaintiff's title. (See s. 116 Indian Evidence Act I of 1872). Where the suit is for declaration of title as against a tenant and also against a trespasser the former portion of the relief falls under s. 7 (xi) and the latter does not. *Hira Lal v. Surendra Nath*, 91 I. C. 488 = 1926 Cal. 50†.

From this it follows that if the plaintiff files a suit in ejectment not only against the actual contractee (*viz.*) the lessee but impleads other persons between whom and himself there is no privity of contract, then, he cannot treat those other persons as his 'tenants' and value his relief against them on the basis of a tenancy and under this clause. *Promotha v. Amiraddi*, 24 C. W. N. 151 = 55 I. C. 178. That was a suit for possession against 3 defendants, and 1st defendant admitted that he had been holding the land as a tenant under the plaintiff under a lease that had expired. The other other two tenants established their plea that there was no relationship of landlord and tenant between them and the plaintiff. It was held that the suit could not proceed as against the defendants other than 1st defendant on a plaint stamped with court-fee under this clause. See also *Hira Lal v. Surendra Nath*, 1926 Cal. 504 = 91 I. C. 488. A suit to eject a tenant from a portion of a house falls under this clause. *Sri Ram v. Jagat Narain*, 93 I. C. 291.

**Ejectment of an under-raiyat.**—In such a suit the court fee payable is on one year's rental. *Girish Chandra Dutt v. Girish Chandra Mali*, 54 C. L. J. 68 = 133 I. C. 689.

**Tenant "holding over".**—Regarding the effect of holding over by a tenant after the determination of the lease see s. 116 of the Transfer of Property Act. It can be argued that a person who was a tenant ceases to be a tenant on the expiry of the date fixed in the notice to quit, as the date on which the tenant is to deliver possession. In *Vithaldos v. Ghulam Ahmed*, 99 I. C. 438 = 1927 Nag. 156, it was observed as follows 'A tenant or a tenant holding over is a trespasser and not a tenant of any kind after he has refused to comply with the proper notice to quit. But the claim in a suit must be regarded with reference to the facts existing when the cause of action by refusing to quit on demand, arose and that is the point of time to which the suit for ejectment in consequence of that refusal must be referred'. A "tenant holding over" is a technical expression. "S. 116 of the Transfer of Property Act must be regarded as supplemental to and in qualification of clause (a) of s 111 which says that a lease determines by efflux of the time limited thereby. The

intention of s. 116 is that the lessee holding over with the landlord's mere consent has still a lease". *The Bengal National Bank v. Raja Janaki Nath*, 54 C. 813 = 104 I. C. 484 = 1927 Cal. 725. The words "including a tenant holding over after the determination of the tenancy" are sufficient to indicate that the provision is meant to cover even those cases where a person was a tenant before but his tenancy has been determined since. *Telanga Marandi Majhi v. Chandra Mohan Singh*, 1933 Pat. 664. See also *Ramcharan Singh v. Sheo Dutt Singh*, 2 Pat. 260 = 74 I. C. 619 = 1923 Pat. 380; *Ram Lal Sahu v. Mt. Bibi Shara*, 1935 Pat. 90. The word "tenant" in this clause includes a person who could be properly described as such immediately before the institution of the suit but whose tenancy has been terminated by his landlord. But the difficulty does not at all arise where one looks at the cause of action. If it is one based on a contract of tenancy and termination thereof then the suit clearly falls under clause (cc). A person who entered by a lawful demise or title and after that has ceased, wrongfully continues in possession without the assent or dissent of the landlord is a "tenant on sufferance." *Kamakhyia v. Khalik Ahmad*, 102 I. C. 821 = 1927 Pat. 305. A suit to eject a person who was a tenant and whose tenancy was terminated but who still continues to be in possession of the property falls under this clause. *Narayan v. Thukaram*, 74 I. C. 93 = 1923 Nag. 310; *Vithaldas v. Ghulam Ahmad*, 99 I. C. 438 = 1927 Nag. 156. Where it appeared that the father of the defendant had during his lifetime held over the land for number of years after the expiration of the lease, a suit in ejectment against the son claiming to be on the land on payment of rent would fall under this clause as the son cannot be held to be in the position of a trespasser on the land, against whom the plaintiff has to proceed by way of getting his title established in a properly constituted suit. *Asutosh Pramanik v. Jihandhan Genguly*, 1933 Cal. 822.

But when the tenancy that had existed and had been held by the defendant had been terminated and the suit was one for ejectment of the defendant as a trespasser it was held that clause (cc) did not apply. *Govinda Ram v. Dhulu Pala Dutt*, 1928 Cal. 753 = 32 C. W. N. 160.

**Tenant claiming occupancy rights.**—Where plaintiff, an inamdar, claimed that he was entitled to both warams in the inam land and prayed for a decree establishing his right and removing the defendants tenants from possession on the footing that he was entitled to eject them after due notice by virtue of his title to the kudivaram, and the defendants did not dispute the plaintiff's right to melvaram but asserted occupancy right in the land, it was held that court-fee was payable under S. 7 cl. (iv) (c) and not under this clause. *In re Sobhanadri Rao Pantulu*, 140 I. C. 462 = 36 L. W. 701 = 63 M. L. J. 759. But see *Punyamurthulu v. Sreeramulu*, 52 M. L. J. 100 = 1927 Mad. 331 = 99 I. C. 981. In a recent case in Madras the decision in 63 M. L. J. 759 above referred to has been dissented from, the court holding that such a suit falls under s. 7 cl. v. and not cl. iv (c), court-fee



being payable on the value of the kudiwaram interest in the land. See *Maroof Sahib v. Ayyakannu Naickar*, 41 L. W. 552. In any view, such a suit would not come under this clause.

### Clause (d).

This applies to a suit by a tenant to contest the validity of a notice to quit issued by a landlord, where the tenant claims that there should be a tender or payment to him of the value of the improvements effected by him before he can be ejected and that notice when such an offer was not made was bad. *Nurulla v. Atra Singh*, 111 P. R. 1883; but it is obvious that in such a suit the court could not give a decree directing the defendant landlord also to pay any specified sum determined as the value of improvements, the sole issue in the suit being the validity or otherwise of the notice to quit. But in a suit to contest a notice of ejectment, the tenant may claim alternatively non-ejectment and compensation. Then, the suit should be valued on the rental of the land, without any regard for compensation claimed, the claim for compensation being regarded as ancillary. If ejectment were decreed with compensation and the tenant appealed claiming still non ejectment and in the alternative more compensation he would still pay on the original subject-matter, that is the rent. But where the landlord defendant appeals and the liability he seeks to get rid of is simply the amount of compensation, he should pay *ad valorem* court-fee. *Hoshnak Rai v. Ghulam Mustafa*, 11 Lah. L. T. 116.

### Clause (e).

This is a case of a tenant who has been illegally ejected to recover possession of the occupancy. As in the converse case of suits by landlord under clause (cc) if the tenant files the suit impleading not only the landlord but also third parties, then this clause is not applicable and the suit must be valued as one for possession. *Fazzand Ali v. Mohanth*, 32 C. 268; *Palaniappa v. Sithravelu*, 31 Mad. 14; *Mt. Bhagobai Devisingh v. Shiamlal*, 1933 Nag. 312.

Again as in the case of suit in ejectment under clause (cc), where the suit for possession by the tenant is brought not merely on the basis of an illegal ejectment but the suit involves also the question of title then the valuation should be under para v of the section. *Krishna Chandra v. Raja Mahakur*, 5 Pat. 208=94 I.C. 19=1926 Pat. 251; *Bala Sidhakta v. Perumal*, 27 M. L. J. 475; *Pomotha v. Amiraddi*, 24 C. W. N. 151. See also 27 I. C. 162 (Mad); 91 I. C. 488; 32 C. W. N. 1113.

**"Occupancy of land," "Ejected."**—These expressions are used in respect of a ryot or persons in actual possession and not to persons who are entitled only to *melwaram* rights. Thus a suit by lessee of melwaram right against the lessor and other persons claiming under him is to be stamped under para (v) and not under this cause. *Palaniappa v. Sithravelu*, 31 M. 14=17 M.L.J. 478.

'*Illegally ejected*' means ejected nominally in conformity with, but really, in contravention of the provisions of law. *Sundar Lal v. Jassie Cardline Murray*, 16 I. C. 963-

### Clause (f).

This applies to suits for abatement of rent by a tenant against landlord. It is provided by s. 38 Madras Estates Land Act that where for any land in his holding an occupancy ryot pays a money rent, he may institute a suit before the Collector for the reduction of this rent on one or the other several grounds therein mentioned. Plaints in suits under s. 38 of the Madras Estates Land Act have not been exempted from court-fee.

When the suit is for the abatement of the amount of periodical payment by the plaintiff to the defendant, between whom and the plaintiff there is no relationship of landlord and tenant court-fee is not leviable under this clause but as for a mere declaration under Art. 17, Sch. II. *Rayarappan Kutti Nambiar v. Chathathut Kutti Nambiar*, 46 M. L. J. 377.

**Year.**—It has been defined in s. 3 (38) of the Madras General Clauses Act I of 1891 as a year reckoned according to the British calendar. It has been held to denote a period of 365 days reckoning backwards from the date of presentation of the plaint. *Ghasi Ram v. Har Govind*, 28 A. 411.

**Suits not falling under the clause—Assessment of fair and equitable rent.**—There is no particular provision under the Court-Fees Act applicable to a suit for assessment of fair and equitable rent and therefore *ad valorem* court-fee has to be paid under Sch. I, Art. 1 of the Act. *Dhanukdhari v. Mani*, 6 Pat. 17=100 I. C. 913=1923 Pat. 123.

**Commutation of rent.**—In an appeal by a landlord where he stamped his memorandum on an amount being the difference between the rate claimed by the tenant and the rate fixed by court, it was held that Article 17 (ii) or (vi) of Sch. II applied as this class of suit was not provided for in this paragraph. *Sonadatti Kalai v. Veerappa Goundan*, 78 I. C. 968=46 M. L. J. 450=1924 Mad. 623=19 L. W. 629. Section 40 of the Madras Estates Land Act provides for suits for commutation of rent. The Government has not remitted the court-fee in the case of such suits.

**Suit to contest the landholder's right to sell.—Appeal.**—In *V. Aiyaswami Aiyar v. The District Board of Tanjore*, 52 M. 972=57 M. L. J. 510=1930 Mad. 43, the question for consideration was as to the amount of court-fee payable in respect of a memorandum of second appeal preferred by a ryot in a suit filed by him under s. 112 of the Estates Land Act. The ryot contested the landholder's right to sell his holding under s. 112 and one of the reasons given by him was that there was no proper notice. In second appeal the ryot paid a fixed fee of Rs. 10 under Art. 17-B Sch. II of the Court-Fees Act as amended by Act V of 1922. Under the notification issued by the Govern-

ment No. 1245 dated 15th April 1926, the Government were pleased 'to reduce to Rs. 15 the fees chargeable under Schedule II on a memorandum of second appeal in a suit of the class mentioned in Article 17-B and instituted in a Revenue Court.' If Art. 17-B were to apply then the proper fee payable will be Rs. 15. Anantha-krishna Aiyar, J., observed that it cannot be said that it is possible to estimate at a money value the subject-matter in dispute, *Bunwar Lal v. Daya Sankar*, 13 C. W. N. 815. His Lordship after an elaborate discussion of the case law bearing on the construction of Art. 17-B, Sch. II (for which *see* commentaries under that Article) came to the conclusion that "no question could arise with reference to plaints filed under s. 112 of the Estates Land Act as under clause 35 of the notification the Government has remitted the fees chargeable on same. The question could arise only with reference to the court-fee payable in respect of appeals and second appeals. That is not a case where it is possible to estimate at a money value the subject-matter in dispute and as such are governed by Art. 17-B, of Sch. II of the Act." To the same effect is the ruling by Wallis, C. J., in S. A. 1430 of 1918 dated 7-4-1919. (Madras High Court unreported.) The appeal was against a decree under s. 112 of the Estates Land Act. His Lordship observed "The duties on memorandum of appeal are not affected by the Notification 2419 of the Government of India which may affect plaints."

**Jurisdiction**—Section 8 of the Suits Valuation Act provides that except in the classes of suits enumerated therein valuation for court-fees and jurisdiction shall be the same. Paragraph xi is not of such exceptional class of suits. Consequently the valuation for jurisdiction of suits comprised in this para must be the same as the valuation for court fees. In the case of suits in ejectment by a landlord of the tenant from the land under clause (cc) the valuation for jurisdiction is the same as the valuation for court-fees. Before Act VI of 1905 was passed under s. 14 of the Madras Civil Courts Act III of 1873, the valuation for recovery of possession of land, houses, etc., had to be computed as under para v of s. 7 of the Court-Fees Act. But afterwards this class of cases has been catalogued amongst the suits mentioned in para xi and s. 14 of the Madras Civil Courts Act is by implication repealed so far as the class of suits covered by clause (cc) is concerned. Hence s. 8 of the Suits Valuation Act alone is applicable and the valuation for the purpose of jurisdiction is not to be under s. 14 of the Madras Civil Courts Act. *Narayanadaswami Naidu v. Seshagiri Rao*, 39 M. 873 = 31 I. C. 104 on appeal from 28 M. L. J. 573 = 24 I. C. 374. *Mohan v. Bhuteswar*, 83 I. C. 1 = 1925 All. 142. *Nandan Singh v. Debi*, 25 I. C. 975.

**Certain types of suits in Malabar, court-fees paid thereon and some suggestions regarding them.**

**1. Suits under the Malabar Compensation Act I of 1900.**—According to s. 3 of the Act, the Act applies to suits based

on (a) Kanam, (b) leases and (c) sometimes, title to immoveable property.

(a) **Kanam.**—For want of a special provision in the Court-Fees Act for a suit for recovery of possession of property held on kanam, such a suit is treated as an ordinary suit for redemption of a mortgage and valued under s. 7 cl. ix of the Act at the principal amount of the kanam, and this practice has obtained judicial recognition. But a kanam is something more than a mere usufructuary mortgage. It is also a lease. It is even something more than a mortgage and lease combined, inasmuch as the kanamdar is entitled to value of improvements on eviction—a feature not found in ordinary mortgages or leases. Further, unlike the mortgage amounts in ordinary mortgages, the kanam amount does not in most cases bear any proportion to the value of the property. It is usual to find kanam of Rs. 5, while the property may be worth thousands of rupees. Even one year's rent of the property would often exceed the kanam amount. Kanams of even Re. 1 are not rare. This is due to historic or other special reasons. Not infrequently at the end of 12 years, the landlord renews the kanam to the kanamdar or his heirs, and the value of the accumulated improvements made—trees grown and buildings constructed—by them will be worth several times the value of the property as it was when first demised to the kanamdar. Again, at the time of the original kanam and at the time of its renewal, the landlord receives as consideration from the kanamdar not merely the kanam amount secured on the property but frequently also a premium called 'manusham'. The value of a suit for possession of property on kanam is therefore often illusory or nominal and is no index of the time and labour necessary for its disposal. As in a suit for redemption of kanam in the Civil Courts, the Registration Department till now charged fees for registration of kanam documents only on the amount of the kanam. But under the rule-making power conferred by s. 78 of the Registration Act, the Government have now, with effect from 1st January 1932, by G. O. Mis. No. 231 Law (Registration) published in the Fort St. George Gazette of 9th December 1931, made a new rule as follows:—"In the case of a kanam deed, fee shall be levied on the total consideration, viz., the aggregate of the amount consisting of the advance, the premium or the present called 'manusham' in North Malabar, and 'avakasm' in South Malabar, the annual rent reserved, and the ascertained amount of compensation if any, for improvements." A kanam is a mortgage of so anomalous a nature that a suit for redemption of it does not admit of being satisfactorily valued and it is desirable that the High Court should under its powers under s. 9 of the Suits Valuation Act make rules directing its proper valuation. With regard to another class of suits in Malabar, viz., suits for removal of a karnavan of a tarwad the High Court has once before exercised this rule-making power under section 9. *Vide* notification in Fort St. George Gazette dated 3rd March 1903, Part II, page 368.

**Suit for redemption of kanam and for recovery of arrears of rent.**—Before the passing of the Malabar Compensation for Tenants' Improvement Act (I of 1900), it was held in 16 Madras 415 and 328 that such suits should be valued at the aggregate of the kanam amount and the amount of arrears of rent claimed. But recently in 50 M. L. J. 493 it was held that since under S. 6 of that Act, in a suit for redemption and recovery of arrears of rent and damages, the plaintiff's claims for arrears of rent and damages were in *pari materia* with the defendant's claim for unascertained improvements and the former could be set off against the latter, court-fee need be levied only on the balance, if any, due to the plaintiff after the improvements were ascertained and set off. Since the value of improvements made for years or generations would invariably exceed the rent claimed, this means in practice, that no court-fee at all is leviable on the rent. It thus comes to this: that if the plaintiff sues for rent alone without redemption, as he very well can, since the two contracts are distinct, he has to pay court fees for it, but that if he joins in the suit a claim for redemption also, he need not pay court-fee for the rent claimed. In the latest decision on the point, C R. P. 666/31 (not reported), it is held that the claim for damages is in *pari materia* with the claim for improvements and that no court-fee *at all* is payable for it, but the question whether claim for rent also stands on the same footing is left open. Some doubt seems to be thus thrown on that aspect of the decision in 50 M. L. J. 493. Suits are not uncommon where the kanam amounts range only from Re. 1 to Rs. 10 and the arrears of rent sought to be recovered are Rs. 1,000 and above but court-fee is paid only on the insignificant kanam amount. It is therefore desirable to frame rules under s. 9 of the Suits Valuation Act charging with court-fees the arrears of rent claimed also, whether or not it is to be set off against the value of improvements, or at least the balance of it left after setting off against it only the kanam amount and the ascertained value of improvements on the date of the suit.

(b) **Leases.**—Suits for possession on leases also seem to call for similar rules being made. But as in their case there is no amount secured corresponding to the kanam amount, court-fee can be made payable only on all the other amounts mentioned above. It may be noted that in a suit for specific performance of a contract of lease, court-fee is payable not merely on the amount of one year's rent as in a suit for possession on lease, but also on the amount of premium (s. 7 cl. x (c) of the Court-fees Act). There is no reason why a similar provision should not be made for a suit for possession on lease particularly since the 'rent' reserved in a Malabar lease does not often represent the annual net yield of the property at the time of the suit.

(c) **Suit for possession based on title**—The Tenants' Compensation Act applies in some cases also to suits for possession of property on plaintiff's title, as a person who is a trespasser, though in

good faith, and is not therefore technically a tenant is to be treated as such under s. 3. Suits for possession of property on title have to be valued under s. 7 cl. v of the Court-fees Act, and according to sub-clause (e) of that clause it is imperative that the buildings in it should be valued. In suits for possession based on mortgage or lease, it is not necessary that the improvements in the property including buildings should be valued as the clauses six and xi relating to them prescribe their value at a certain amount regardless of any buildings in the property, 5 Mad. 284. But when the suit is on title, the imperative provisions of the clause (v) have to be followed and the buildings in the property valued. The plaintiff is the legal owner of the property and everything in it including buildings are to be valued and the fact that he has to pay compensation for them under the Compensation Act before taking possession of them does not relieve him of the necessity of valuing them for purpose of court-fees.

**2. Ryotwari lands and fragmental holdings.**—The whole land in Malabar is practically ryotwari there being no zamindari lands at all and there are practically no inam lands. According to the Court-fees Act suits for possession of zamindari holdings and inam lands have to be valued in the case of the former, at the market value and, in the case of the latter, at 15 times the annual net profits, which value amounts in most instances to practically the market value, while a suit for possession of ryotwari lands has to be valued only at 10 times the revenue, which value always falls far short of the above two values. It is an anomaly that zamindari lands for which the holder has to pay rent to the zamindar and which are therefore ordinarily worth far less than ryotwari lands, for which the holder has to pay only revenue to Government, have to be valued for purpose of court-fees at a higher amount than the latter. Except Bengal, none of the Provinces has so far tried to remove this anomaly. In the Punjab and in the Central Provinces and the Hyderabad Assigned Districts, however, rules have been framed under s. 3 of the Suits Valuation Act making the value for jurisdiction of a suit for possession of ryotwari land at 30 and 12½ times the assessment respectively. But these rules apply only for purposes of jurisdiction and not for court-fees, there being no provision in the Court-Fees Act of those provinces corresponding to the proviso to Sec. 7 Cl. V of the Madras Court-Fees Act that value determined by rules, if any framed under S. 3 of the Suits Valuation Act shall be the value for court-fees also. If any rule is made in Madras under this Section, increasing the jurisdiction value to more than ten times the revenue it would automatically apply to court-fees also, resulting in an increase in the court fees payable unlike in the other Provinces and there will be no justification for it. Moreover, this is an all-India question, and none of the other Provinces has amended the Court Fees Act in this respect, except Bengal. It may be desirable to have some uniformity with them on this point. Fragmented ryotwari holdings exist in Malabar

on a much larger scale than in the other districts. There is no other part of the presidency where the ryotwari fields are so much fragmented and the holdings consist of such a large number of parts, not separately assessed with revenue, of whole fields so assessed. This is probably due to the absence of large expanse of flat lands fit for wet cultivation in this hilly district and possibly also to the density of the population. But whatever be the reasons, there is the fact that fragmental holdings not separately assessed with revenue exist there more than elsewhere. As these fragmented plots have not been surveyed and measured by the Government, it is not possible to say with any accuracy what fraction even in point of area alone, let alone quality, fertility, value, etc., such a plot is of the whole field of which it is a part. In the schedules to the plaints, the parties usually express the linear measurements in terms of what they call a 'six-foot Kōle' or rod, but this is not a standard measurement and not being entered in the Government records cannot be verified and relied on. Now according to the Court-fees Act a suit for possession of ryotwari land has to be valued in the case of an entire estate assessed with revenue, or of 'a definite share' of it, or of a separately assessed 'part' of it, at 10 times the revenue [s. 7, Cl V (b)] and in the case of 'a part' of it not separately assessed and not forming 'a definite share' of it, at the market value. [s. 7, Cl. V (d).] It may be noticed that though the Act thus provides for a suit for possession of 'a definite share' of an entire estate, it does not provide for a suit for possession of 'a definite share' of a separately assessed 'part' of the entire estate. There appears to be thus a lacuna in the Act. Since the passing of the Act, the Government have issued a notification that a suit for possession of 'a fractional share' of a separately assessed 'part' of a ryotwari estate is valuable at 10 times the proportionate revenue payable for that share. All the other High Courts hold that this notification was issued to fill up the lacuna in the Act and provide for a 'definite share' of a 'part'; in other words that the phrases 'definite share' in the Act and 'fractional share' in the notification mean the same thing, that notification applies only when the definite share or fraction, e.g.,  $\frac{1}{3}$ ,  $\frac{1}{4}$  or  $\frac{2}{5}$  sued for is stated, that it cannot be predicated of a specific plot (not separately assessed) in an assessed estate what definite share or fraction it is of the estate, since besides mere extent or area, various unknown factors such as comparative fertility, irrigation facility, value, etc., have to be taken into consideration for that purpose, that the amount or revenue proportionately assessable on a plot of land depends on all these factors together and not merely on its area and that therefore Cl. V (d), under which court-fee is payable on the market value, applies, to a suit for possession of a specific plot of land not separately assessed in an estate or field. But there is conflict of decisions on this point in Madras, the majority of them. *viz.*, S. A. 886/17 and 711/15 (unreported), 19 M. L. T. 266 and 34 M. L. J. 555, some of them by Division Benches agreeing with the above view. On the other hand the decision in

54 M. L. J. 67 by a Division Bench disagreed with all the above Madras and other decisions and it was held that a specific plot not separately assessed in an assessed estate can be said to be a fractional share of it, the area alone without other factors being taken into consideration, that there is difference in meaning between the phrases 'definite share' and 'fractional share' and that therefore the notification would apply to a suit for possession of such a plot so as to make its value equivalent to 10 times the proportionate revenue calculated in point of area. Since the decision in 54 M. L. J. 67, commented on elsewhere in these commentaries, parties have begun to value suits for specific unassessed plots at 10 times the proportionate revenue (in point of such area) as the court fees payable on this method of valuation are much lighter. If as the decisions of all the other High Courts and the majority of the Madras decisions hold, 'definite share' in the Act is synonymous with 'fractional share' in the notification, an unnecessary change in language has been used in the latter, and that has been the cause of the divergence in view. The matter can be easily set right by changing 'fractional share' in the notification to 'definite share.' The Government can do this, and the matter does not need legislative sanction. Under Section 35 of the Act the Government have power to cancel or vary any notification made by them under the Act. This change will not be increasing the court-fees due under the Act, as the decision says that under the Act itself (apart from the notification) a specific unassessed plot has to be valued at the market-value. It will also not be a grievance, as in all the other provinces Court-fees are paid on the market-value in such cases, and even in Madras before 1927 such cases were and now occasionally are, valued, at the market-value. This change will make the method of valuation of specific unassessed plots uniform throughout the whole of India. For a full discussion as to the origin of the notification and its applicability to conditions in the Madras Presidency, see the commentaries under s. 7, cl. v (*d*) *supra*.

8. The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant.

Fee on memorandum of appeal against order relating to compensation.

#### COMMENTARY.

'Act for the acquisition of land.'—The Acts in force are the Land Acquisition Act I of 1894; the Land Acquisition Act (Mines and Minerals) Act XVIII of 1865,



**Applications for compensation.**—All such applications for the compulsory acquisition of land are exempt from court-fee. This section provides for the fee payable in the case of appeals from any order made in such proceedings.

**Scope of the section.**—This section lays down the principle on which court-fees should be calculated on the memorandum of appeal in land acquisition cases. *Muhammed Ali v. Secretary of State for India*, 30 C. 501. This is not a charging section. The section proceeds on the assumption that an *ad valorem* and not a fixed fee is chargeable in such cases under the provisions of the Act. The purpose of this section is that the litigant should be charged in the most favourable way. *In re Ananda Lal Chakrabutty*, 59 Cal. 528.

**"Amount claimed by the appellant".**—This clause shows that the section is intended to apply to appeals by persons claiming compensation and not to an appeal against an award by the Secretary of State. *Secretary of State v. Basawa*, 17 I. C. 764; *In re Assistant Commissioner of Labour*, 78 I. C. 435=46 M. L. J. 150.

**Art. 17 (iv) Sch. II.**—That article applies where the memorandum of appeal is "to set aside an award." Section 8 is a special provision applicable to appeals against all orders including awards relating to compensation under any Act for the acquisition of land, and the special provision overrides and governs the general provision. An *ad valorem* court-fee should be paid under this section. *Kasturi Chetty v. Dy. Collector, Bellary*, 21 M. 369; *Puran Chand v. Emperor*, 92 I. C. 991=1926 Lah. 343.

### Cases to which section does not apply.

1. Appeals by Government. But see commentaries *infra* under that heading.

2. Order for refund of money paid under mistake is no award and not appealable. *Nobin Kali v. Banalata*, 32 C. 921.

**Forum for appeals.**—Under the old Land Acquisition Act such appeals lay to the District Court and now by the Act of 1894, they lie to the High Court. See s. 54 of the L. A. Act. *Krishna Mohan v. Raghunandan*, 4 Pat. 336=87 I. C. 137 (F. B.)

But it is not so in all cases. For instance appeals against orders under ss. 30, 32 etc. of the Land Acquisition Act, regarding disputes between rival claimants are no part of an award. *Ramachandra Row v. Ramachandra Row*, 45 M. 320 P. C. Hence appeals from such decisions of a subordinate court where the amount is not more than Rs. 5,000 lie to the District Court and not to the High Court. See also *Venkatareddi v. Adinarayana Row*, 52 Mad. 142=56 M.L.J. 357 where it was held that the decision of a subordinate judge's court on a reference made by the Land Acquisition officer under s. 30 of the Land Acquisition Act is not an award within the meaning of that Act and consequently an appeal from that decision where the subject-

matter is less than Rs. 5,000 does not lie to the High Court but lies to the District Court. To the same effect is also the decision in *Mahalinga Kudumban v. Theetharaapa Mudaliar*, 56 M.L.J. 387. This is an earlier decision than the one reported in the same volume at p. 357 which followed this decision at page 387. It is undesirable that in the same Land Acquisition proceedings certain class of appeals lie to the District Court and some to the High Court.

**Appeals by Government.**—In the above case it was held that an appeal by the Secretary of State required a court-fee of Rs. 10 only under Art. 17, Cl. (4) Sch. II of the Act. But this distinction seems to be unwarranted in view of the amendment of the Land Acquisition Act and the substitution of a new s. 54 in it by Act XIX of 1921. Now every award under the Land Acquisition Act is a decree and appealable as such. *Rai Bahadur Narasing Das v. Secretary of State for India*, 29 C. W. N. 822 P. C. The inference drawn from the discrimination made between the claimant and the Secretary of State in the matter of court fees to be paid on appeal from the award of the Land Acquisition judge in s. 8 Court-Fees Act is no longer warranted by reason of the Land Acquisition Amending Act making the judge's decision a decree. "The special provision of s. 8 of the Act may now probably be regarded as redundant." *Secretary of State v. K. S. Banerjee*, 97 I. C. 140 = 1927 Cal. 45.

An appeal filed by the collector against an award by a District Court under the Land Acquisition Act is taxable with court-fees under s. 8 of the Court-Fees Act. If s. 8 does not apply then the matter comes within the scope of Art. 1, Sch. I of the Act. Sch. II, Art. 17 is not applicable to such an appeal. *Special Collector of Rangoon v. Ko Zi Na*, 6 R. 281 = 111 I. C. 870 = 1928 Rang. 197; See *Secretary of State for India v. Baij Nath*, 138 I. C. 199 = 9 O. W. N. 396 = 1932 Oudh 224, holding that Sch. I. Art. 1 applies.

**"Amount claimed by appellant."**—In the case of an appeal by the Crown, the above words mean the amount the appellant claims should have been awarded. That is certainly not the natural meaning of the words, but if the section does apply to the case of an appeal by the Crown, then it is the only interpretation. *Special Collector of Rangoon v. Ko Zi Na*, 6 R. 281 = 1928 Rang. 197.

It is obvious that no court will award a claimant more than what he asks for and consequently the amount of compensation awarded can never exceed the amount claimed. Therefore if an appeal is preferred against the award and the court-fee on the difference of the two amounts to be paid, it clearly follows that the appeal contemplated is that of the claimant, and the concluding clause of the section makes it clear. The language used is "the amount claimed by the appellant" and the Government is the person who pays and not the person who claims compensation. The section as it is worded cannot apply to appeals by Government. And in view of further amendment to the Land Acquisition Act this section can well be repealed.

### **Appellate court and its powers.**

1. It cannot pass a decree for more than what is claimed unless the appeal memo is amended. *Percival v. Collector of Chittagong*, 30 C. 516.

2. The amount decreed should not exceed that for which court-fee is paid on memorandum of appeal. *Mahammad Ali v. Secretary of State*, 30 C. 501.

### **Court-fee payable in particular cases.**

#### **1. Apportionment of compensation.**—Section 29 L. A. Act.

When the appellant definitely claims a share in the compensation awarded for the land acquired by Government under the Land Acquisition Act, court-fee is payable on the *ad valorem* scale on the value of the appellant's claim. *Md. Sulaiman v. Ghumandi Lal*, 1931 Lah. 343.

An appeal from an order passed on a reference under s. 18 of the Land Acquisition Act, deciding a question of apportionment of compensation money, claiming a larger sum than that awarded is governed by this section. *Ganesh Das v. Kanthu*, 1935 Lah. 448.

Where Government claims an interest in the land in such a case, the so called apportionment between the Government and the private claimant of the total compensation payable in respect of the property is in substance the same thing as the determination of the amount payable by the Government to the claimant under the circumstances of the particular case and so an appeal relating to such a question must be stamped *ad valorem* under this section. *Mangaldas Girdhardas v. Asst. Collector of Ahmedabad*, 45 B. 277 = 1921 Bom. 325.

**2. Disposal of award amount.**—An appeal against the order of the Collector, on a reference under s. 18 of the L. A. Act is an appeal from an original decree and must be stamped as such. *Sheo Ratan Rai v. Mohri*; 21 A. 354. *Balaram v. Shyam Sundar*, 23 C. 531.

**3. Investment of compensation amount.**—Section 32 of the L. A. Act.

Where trust properties were acquired and the compensation money was invested and the trustee was permitted to draw the interest, an appeal against that order was capable of valuation, and so Art. 17 (vi) does not apply. The appellant, who wanted the compensation amount to be paid to her, should pay *ad valorem* fee on the value assessed by the Taxing Officer. *Trinayani Dasi v. Krishna Lal*, 39 C. 906 = 14 I. C. 724; *Muhammad Ali v. Ahmad Ali*, 26 M. 287 *Shiva Rao v. Nagappa*, 29 M. 117.

**4. Additional compensation granted in compulsory acquisitions.**—Section 23 clause 2 of the Land Acquisition Act. Where an appellant whose lands were acquired under the Land

Acquisition Act (I of 1894) being dissatisfied with the amount of compensation awarded to him by the court on a reference made to it under section 18 of the Act, appeals to the High Court, is he bound to include in the valuation of his appeal the amount of 15 per cent of the excess market value and pay court-fee thereon? This was the subject of a reference by the Taxing Officer of the Madras High Court. *Koppaka Brahmanandam v. The Secretary of State for India*, 53 M. 48=57 M. L. J. 357=1930 Mad. 45. Ananatakrisna Ayyar, J., answering the reference in the affirmative observes as follows: "The compensation to be awarded includes not only the market-value but also the 15 per cent in such market-value. The extra amount of compensation claimed by the appellant in an appeal should under s. 8 of the Court-Fees Act include also the 15 per cent of the market-value and he should pay court-fees thereon. An appeal is different from a claim put forward by the applicant before the collector. When once the court on a reference to it under s. 18 of the Land Acquisition Act determines the amount of compensation to be awarded for the land acquired, the claimant if dissatisfied with the amount of compensation so awarded by the court should in case he prefers an appeal value his appeal at the figure which represents the difference between the amount of compensation awarded to him and the amount of compensation that he claims in the appeal. *Muhamad Ali Amjad Khan v. Secretary of State for India*, 30 C. 501". Where the appellant claims not only the extra market-value but also the extra 15 per cent thereof, "to entitle him to do so, on a proper construction of s. 8 of the Court-Fees Act, he is bound to include in the valuation of his appeal the extra 12 per cent also and pay the court-fee due on the amount."

**Consolidation of appeals.**—In a batch of 44 Land Acquisition references, having regard to the fact that the parties were the same in all cases and the plots of lands were contiguous, etc., it was held that the appeals should be consolidated and the court-fee paid upon the value of the consolidated appeals under s. 17 of the Court Fees Act subject to the limitation under Art. I Sch. I of the Act. *Kasi Prasad v. Secretary of State for India*, 29 C. 140. Unfortunately the head-note in the authorised Report is rather inaccurate. What their Lordships actually decided was that for the purposes of the hearing the appeals may be consolidated and heard together and the only concession granted was that the maximum limit for collection of court-fee prescribed by Art. I, Sch. I of the Act might be applied. That only means that if the sum total of the separate amounts of court-fees paid on the individual appeals exceeded Rs. 3,000 the sum of Rs. 3,000 alone may be collected on the consolidated batch. That is quite a different thing from saying that the value of all suits should be totalled up and the court-fee paid on that total amount subject to a limit of Rs. 3,000. Where the fee exceeds Rs. 3,000 it may not perhaps make any difference whether the fee in each suit is added and the total fee collected or whether the value of all the claims is totalled

and a fee is calculated on that total. But where the maximum limit is not applied as for e.g. in Madras there will be a difference between the fee leviable according to these two different kinds of computation. The wrong head-note of the 29 Calcutta decision has perhaps influenced the learned judges of the Madras High Court in *Vengu Naidu v. Dy. Collector of Madura*, 34 M. L. J. 279 for at p. 280 of the report Phillips, J., referring to the 29 Calcutta decision makes a general observation that suits could be consolidated without noticing the reservation contained in the Calcutta decision. See 29 C. 140 at p. 147. This is well brought out in a later decision of the Calcutta High Court itself as follows:

"Where an application was made for the consolidation of several appeals in Land Acquisition cases with the prayer that the memorandum of appeals in all the cases might be treated as one memorandum of appeal and the appellants might be allowed by the application of para 17 of the Court-Fees Act to pay court-fees on the consolidated value of all the appeals instead of paying court-fees for each appeal separately, it was held that the appeals might be consolidated for the purposes of hearing them but the court-fees must be paid separately for each appeal according to the provisions of the Court-Fees Act. The memorandum of appeals in the several cases could not be treated as one memorandum for a single appeal. Section 17 of the Court-Fees Act could not be invoked in a case like the present one." *Moosa Sulaiman v. Secy. of State for India*, 32 C. W. N. 776.

**Bengal Amendment.**—The following new sections have been enacted in Bengal by the Bengal Act VII of 1935.

**8A.** *In every suit in which an ad valorem court-fee is payable under this Act on the plaint, the plaintiff shall file with the plaint a statement of particulars of the subject-matter of the suit and his own valuation thereof unless such particulars and the valuation are contained in the plaint. The statement shall be in such form and shall contain such particulars as may be prescribed by the Local Government by notification in the Calcutta Gazette. In every such suit the plaintiff shall also, if the Court so directs, file a duplicate copy of the plaint and of the said statement*

**8B.** (1) *In every suit in which a court-fee is payable under this Act on the plaint or memorandum of appeal the Court shall as soon as may be after the registration of the plaint or memorandum of appeal, and in every case*

*Statement of particulars of subject-matter of suits and plaintiff's valuation thereof.*

*Procedure where insufficient court-fee is filed on plaint or memorandum of appeal,*

before proceeding to deliver judgment, record a finding whether a sufficient court-fee has been paid.

(2) If the Court records a finding that an insufficient court-fee has been paid on the plaint or memorandum of appeal the Court shall—

- (a) stay all further proceedings in the suit until it has determined the proper amount of such court-fee payable and the plaintiff or the appellant, as the case may be, has paid such amount or until the date referred to in clause (b), as the case may be :

*Provided that if the plaintiff or appellant gives, within such time as the Court may allow, security, to the satisfaction of the Court, for the payment of any additional amount for which he may be found liable the Court may proceed with the suit,*

- (b) fix a date before which the plaintiff or appellant shall pay the amount of court-fee due from him, as determined by the Court under clause (a).

(3) If the plaintiff or appellant fails to give the security referred to in clause (a) of sub-section (2) or to pay the amount referred to in clause (b) of that sub-section within the time allowed, or before the date fixed, by the Court, as the case may be, the suit shall be dismissed.

8C. If the Court is of opinion that the subject-matter of any suit has been wrongly valued it may revise the valuation and determine the correct valuation and may hold such inquiry as it thinks fit for such purpose.

*Inquiry as to valuation of suits,*

8D. (1) For the purpose of an inquiry under section 8C the Court may depute, or issue a commission to, any suitable person to make such local or other investigation as may be necessary and to report thereon to the Court.

*Investigation to ascertain proper valuation*

*Such report and any evidence recorded by such person shall be evidence in the inquiry.*

(2) *The Court may, from time to time, direct such party to the suit as it thinks fit to deposit such sum as the Court thinks reasonable as the costs of the inquiry, and if the costs are not deposited within such time as the Court shall fix, may, notwithstanding anything contained in any other Act, dismiss the suit if such party is the plaintiff or the appellant and, in any other case, may recover the costs as a public demand.*

**8E.** (1) *The Court, when making an inquiry under section 8C and any person making an investigation under section 8D shall have, respectively, for the purposes of such inquiry or investigation, the powers vested in a Court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—*

- (a) *enforcing the attendance of any person and examining him on oath or affirmation ;*
- (b) *compelling the production of documents or material objects ; and*
- (c) *issuing commissions for the examination of witnesses*

(2) *An inquiry or investigation referred to in subsection (1) shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code.*

**8F.** *If in the result of an inquiry under section 8C the Court finds that the subject-matter of the suit has been undervalued the Court may order the party responsible for the undervaluation to pay all or any part of the costs of the inquiry.*

*If in the result of such inquiry the Court finds that the subject-matter of the suit has not been undervalued the Court may, in its discretion, order that all or any part of such costs shall be paid by Government or by any*

*party to the suit at whose instance the inquiry has been undertaken, and if any amount exceeding the proper amount of fee has been paid shall refund the excess amount so paid.*

#### COMMENTARY.

Sections 9 and 10 are repealed and in their place, Sections 8A to 8F are enacted. The new sections are more comprehensive and indicate the procedure to be followed in the matter of ascertainment of proper court-fee and collection thereof more minutely, than Ss. 9 and 10 of the main Act, thus making the Act a self-contained enactment and obviating the necessity of having recourse to the provisions of the Code for any purpose relating to payment of court fees. The important changes introduced are :—

1. In every suit or appeal, a finding shall be recorded as to the sufficiency of court-fee as soon as may be after the registration of plaint or memorandum of appeal and in every case before the judgment is delivered. This ensures the question being considered by the presiding officer in every case, whether the party takes objection or not.

2. If the court finds the court-fee paid as insufficient, it shall fix a date for the payment of the deficit court-fee and shall not proceed with the suit or appeal until the deficiency is made good. If the deficit court-fee is not paid within that date, the suit or appeal shall be dismissed. S. 10 (2) of the main Act which confers a similar power on courts is not of so wide a scope, applying only to under-estimation of market-value and net profits in suits, though O. 7, R. 11 C. P. C. would enable the court to deal with all cases of non-payment of proper court-fee in suits and to reject a suit if proper court-fee is not paid within the time granted by court. An important innovation introduced is that enabling the court to go on with the suit or appeal if the plaintiff or appellant furnishes proper security for payment of deficit court-fee found due. In big suits, where a large sum of money may be payable as court-fee, this would enable a party to go on with his suit or appeal, even if he could not find immediate money.

3. The power of the court to revise the valuation given by the plaintiff or appellant and to determine the correct valuation is placed beyond doubt. By the insertion of the words "subject to the provisions of section 8C" in s. 7 cl. (iv), this power can be exercised even with regard to suits where an arbitrary valuation has been allowed till now. Even prior to the enactment of s. 8C, the Calcutta High Court was of opinion that Courts had power to revise the plaintiff's valuation in a suit falling under cl. iv by virtue of O. 7, rr. 10 and 11, C. P. Code, but in the absence of rules framed under s. 9 of the Suits Valuation Act, it would have no standard to fix the value. See 61 Cal. 796 (F. B.) This position is not altered by the amendment.



Under the main Act, the court has power to revise the valuation only when it finds the market-value or annual net profits understated in the plaint and section 8C enacted in its place is much wider in scope as submitted above.

4. While s. 9 of the main Act provides for issue of a commission to ascertain the correct value, it does not provide for the costs of such commission. When inquiry is instituted at the instance of the defendant, he may be asked to defray the costs of the commission under the general provisions of the Code and when it turns out that the plaintiff's valuation is wrong he can be directed to pay the costs to the defendant ultimately. But when objection is taken by the office in the interests of revenue, can the plaintiff be asked to find money for the costs of the commission? If he is made to defray the costs of commission and if ultimately it turns out that he has valued correctly, is he to be penalised on account of objection being taken by the office unnecessarily. On account of these practical difficulties, courts have been reluctant to use the powers under s. 9. The new sections 8D and 8F provide for these objections. Now in Bengal the courts may even order that the costs of the commission shall be paid by Government. It may be noted that in Assam also s. 10 has been amended with a view to make provision for the costs of such commissions but it is not so comprehensive as the amendments made in Bengal.

9. If the Court sees reason to think that the annual nett profits or the market-value of any such land, house or garden as is mentioned in section 7, paragraphs 5 and 6, have or has been wrongly estimated, the Court may, for the purpose of computing the fee payable in any suit therein mentioned, issue a commission to any proper person directing him to make such local or other investigation as may be necessary, and to report thereon to the Court.

Power to ascertain  
nett profits or market-  
value.

#### COMMENTARY.

**Bengal Amendment.**—This section is repealed in Bengal by Bengal Act VII of 1935. See under ss. 8A to 8F *supra*.

#### Application of the section.

1. Sections 9 to 11 apply only to suits and not to appeals. *Balkaran v. Govinda Nath*, 12 A. 129 (F. B.); *Hari Ram v. Akbar Hussain*, 29 A. 749 but in the Punjab the view is held that they apply to appeals also 109 P. R. 1912 = 15 I. C. 463.

2. The court can start the investigation when it is of opinion that the suit has been undervalued.

3. The court can act only in the case of suits falling under s. 7 paragraphs (v) and (vi) when it thinks the value or nett profits have been wrongly mentioned. It does not apparently apply to a case for example a suit falling under para IV-A of s. 7, where also the market-value has to be computed.

**Is the section necessary?**—As observed already the scheme of valuation under the Act for the computation of the court-fee is either an *ad valorem* one or a fixed one. If it is to be on an *ad valorem* basis then the value is either the market-value, or a value put by the plaintiff as he chooses, or one calculated at a multiple of nett profits or the amount of revenue. It is only in cases where the Act directs the fee to be computed on the market-value or the nett profits that the question of determination of the market-value or profits comes in. When such a question arises a court could decide it as it would any question of fact. Order 26, r. 9 C. P. C. provides for the issue of commission for local investigation. It is thereby enacted that in any suit in which the court decides a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or *annual nett profits*, the court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the court etc. It will be seen there is ample provision in the C. P. C. to enable it to issue a commission in proper cases, to make a local investigation about the market-value of property or nett profits. It is therefore a matter for consideration whether there is any necessity to specially empower a court to issue commissions and hedge the power with restrictions the necessity for which is not apparent. In the first place there is no need to have a separate section giving the power to court to issue commissions in view of the provision in the Code. Secondly the power given by s. 9 is inadequate as it does not cover all kinds of suits and does not relate to appeals.

There are suits for instance that fall under s. 7 (iv-A.) (Madras amendment) for cancellation of a decree or document, or s. 7 (x) (d) for specific performance of an award, or Art. 17 (A) of Sch. II (Madras amendment) where the court-fee depends on the value for jurisdiction which in turn depends on the value of the property. In all these cases the value of the property may have to be determined by the issue of a commission for local investigation. Again there are lands assessed to revenue. In cases where for stamping an appeal, it is impracticable to ascertain accurately what portion of permanent revenue has been assessed on the lands in dispute in a suit, the party should furnish a memorandum giving an estimate of the market-value. A commission may issue to test the same. *Ex parte Monee Rangappan*, 3 M. H. C. R. 352.

Further in appeals in mortgage suits for instance where the appellant seeks to include or exclude one item of property from the mortgage decree the value of that item has to be taken into con-

sideration in the determination of the court-fee. To all these cases, suits and appeals s. 9 is inapplicable. When it is found therefore that s. 9 is redundant in cases where the C. P. C. applies and is inadequate as it does not cover cases set out above where such powers are necessary, the question naturally arises whether any useful purpose is served by this section at all and whether it could not as well be deleted. Further there is no power under the section to make the plaintiff pay the cost of the commission except in Assam where section 10 has been amended to confer such power.

### Issue of commission.

(a) **Issue discretionary.**—The court must exercise its discretion and come to the conclusion that a local investigation is necessary and it is not bound to issue one at the mere request of a party. The court may itself take the evidence also. *Hari Pada v. Dwijendra*, 5 C.L.J. 28; *Hari Ram v. Akbar Hussain*, 29 A. 749.

(b) **Commission may issue at any stage:** *Valliya v. Suppan Nair*, 2 M. 308.

(c) **Report of commissioner** is not final and not binding on the court. *Madusudhan v. Rayemonce*, 13 W. R. 326. The commissioner may be examined on his report. *Grish v. Shoshi*, 27 C. 951.

(d) **Right to adduce evidence.**—A party has no absolute right to adduce evidence before the commissioner. *Girish v. Shoshi*, 27 C. 951. Regarding the issue of commissions generally by civil courts, see the Code of Civil Procedure O. XXVI.

**Costs of commission.**—If a commission is ordered under this section, not at the instance of the plaintiff there is no power to make the plaintiff deposit the costs of the commission. *Jaleka Bibi v. Danis Mahommed*, 30 C. W. N. 952=1930 Cal. 65. But see now Ss. 8-D and 8 F newly added in Bengal. In Assam also section 10 has been amended so as to confer such power.

**Under or over-valuation.**—The onus of proof of wrong valuation of property lies on the party who alleges it. *Umasankar v. Mansur*, 13 W. R. 326; *Wajid Ali v. Hanuman*, 12 W. R. 484.

A court is not entitled to hold without any evidence that the land litigated is worth more than what is put in the plaint. *Haripada v. Dwijendra*, 11 C. W. N. 12.

In a case depending upon valuation of property in dispute, if the claim is under-valued the proper course is to admit the plaint or memorandum of appeal and take steps under this section. *Jaleka Bibi v. Danis Mahommed*, 33 C. W. N. 952=1930 Cal. 65.

It is not in the power of the Court to call upon the appellant to produce evidence to substantiate the value of his claim. If the court is of opinion that the same is undervalued the court can proceed under this section. *Bhandarannessa Chaudurani v. Ramachandran*, 33 C. W. N. 845=1929 Cal. 717.

**Finding of court of first instance.**—Where a Munsiff has held that the value of the property was within his jurisdiction, the subordinate judge cannot hold that the former had no jurisdiction to hold so. *Ishan Chandra Mookerjee v. Lokanath Roy*, 14 W. R. 451.

**Section 28 of the Act, and O. VII. r. 11 C. P. C.**—Sections 9, 10 and 11 are not in conflict with s. 28 of the Act or the provisions of O. VII, r. 11 C. P. C. Section 28 is of universal application and wider in scope than ss. 9 and 10. Cases coming under s. 28 of the Act would arise only where through inadvertence or mistake of the court, a plaint which was subsequently discovered as insufficiently stamped was received, filed or used. *Balakaran v. Govindnath*, 19 A. 129.

10. (i) If in the result of any such investigation the Court finds that the nett profits or market-value have or has been wrongly estimated, the Court, if the estimation has been excessive, may in its discretion refund the excess paid as such fee: but, if the estimation has been insufficient, the Court shall require the plaintiff to pay so much additional fee as would have been payable had the said market-value or nett profits been rightly estimated.

Procedure where  
nett profits or market-  
value wrongly esti-  
mated.

(ii) In such case the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

**Local Amendment.**—The following clause has been substituted for clause (ii) in Assam by Assam Act III of 1932.

((ii) *In such case—*

(a) *the suit shall be stayed until the additional fee is paid and if the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed; and whether the additional fee is or is not paid,*

(b) *the Court may, if it is of opinion that the estimation has been grossly insufficient, further order that the expenses*

*of the commission, or such portion thereof as the Court may think reasonable, be paid by the party in fault to the Government and the order so made shall have the force and effect of a decree passed by the Court.*

#### COMMENTARY.

**Amendment.**—Clause 3 of the section has been repealed by Act XII of 1891.

**Bengal Amendment.**—Sections 9 and 10 have been repealed in Bengal by Bengal Act VII of 1935. See under Ss. 8-A to 8-F newly added in Bengal.

**Scope and application.**—Sections 9 and 10 provide for the ascertainment of the value of the property in litigation, and the means for its realisation. *Krishna Mohan v. Raghunandan*, 4 Pat. 336 = 1925 Pat. 392, F. B. In the case of excess fee paid it is within the discretion of the court to refund the excess 'The Court *may* refund.' Contrast with this the provision where there is a deficit, when the Court is bound to dismiss the suit.—"The Court *shall* dismiss." Section 10 allows a court to dismiss a suit for non-payment of the additional court-fee when it has jurisdiction to dismiss the suit. *Ganesh Tavanappa v. Saliji Bharmappa*, 51 B. 236 = 1926 Bom. 257; *Ram Nidhi v. Balkrishna Singh*, 60 I. C. 654.

**O. VII. r. 11 C. P. C.**—Order 7, Rule 11 C. P. C. lays down that a plaint shall be rejected \* \* \* (1) where the relief claimed is undervalued, and the plaintiff on being required by the court to correct the valuation within a time to be fixed by the court fails to do so;

(2) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped and the plaintiff on being required by the court to supply the requisite stamp paper within a time to be fixed by the court fails to do so.

The decisions that supported the view that the provision in s. 54 of the C. P. C. (of 1882) [now O. 7, r. 11] and s. 10 of the Act had reference to the initial stages of a suit do not seem to be of any importance, now that it is settled law that a court acting under O. 7, r. 11 C. P. C. could reject a plaint even after it had been admitted and duly registered. *Padamanath Singh v. Aranth Lal*, 34 C. 20 F. B. See also *Kishore Singh v. Sahdal Singh*, 12 A. 553.

Of course if it be held that O. 7, r. 11 empowers a court to reject a plaint in the initial stages of a suit before a plaint has been registered then this section applies to all stages in the progress of a suit. *Vallija Kesava v. Suppan Nayar*, 2 M. 308. But as has been already

observed the current view is that the power under O. 7, r. 11 is equally unrestricted. It may be noticed that O. 7, r. 11 states that in case the deficit court-fee is not paid the plaint shall be rejected. Where as the result of an enquiry under s. 9 the court orders additional court-fee to be paid within a time and the plaintiff fails to do so the plaint is not to be rejected under O. 7, r. 11 but the suit itself should be dismissed under this section. *Walli Amanji v. Muhammad Adam*, 26 I. C. 746.

**Clause 2 of the section.**—The word 'suit' includes an appeal. *Dyal Singh v. Ram Radha*, 15 I. C. 463. But See *Balkaran v. Govinda*, 12 All. 129.

**Jurisdiction.**—The question of court-fee should be determined at the earliest possible moment. *Hitendra v. Rameshwar*, 62 I. C. 43; *Walaiti Ram v. Gopi*, 152 I. C. 799 = 1935 Lah. 75.

The court can dismiss a suit under this section only where it has got the jurisdiction to try the suit; otherwise the court is bound to return the plaint under O. 7, r. 10 C. P. C. for presentation to the proper court which will give credit to the court-fee already paid by the party. *Ganesh v. Tatyia Bharmappa*, 51 B. 236 = 1929 Bom. 257 = 29 Bom. L. R. 280. See also 8 B. 313 and 35 Mad. 567.

### **Procedure where deficit court-fee is not paid as directed.**

1. Suit to be stayed until deficiency is made good. *Tajammal v. Nowabdoad Khan*, 3 I. C. 830.

2. Where there is still a non-compliance of the order of the court, the court has a right to enlarge the time for payment. *Dwaraka Nath v. Kethara Nath*, 2 I. C. 1; *Chuni Lal v. Ajudhia Prasad*, 19 A. 240; *Bhagwandas v. Haji Abu*, 16 B. 263; *Rai Kesori v. Madan Mohan*, 31 C. 75. See also s. 148 C. P. C.

3. Where the court-fee is still not paid, then the court is bound to dismiss the suit; for the section is mandatory. *Bidhubushan v. Kolachand*, 196 I. C. 335 = 1927 Cal. 775. It should not reject the plaint but only dismiss the suit. *Brij Krishna Dass v. Murali Rai*, 56 I. C. 316.

**Effect of dismissal under the section.**—A dismissal has the same effect as rejection under O. 7, r. 11 C. P. C. *Balkaran v. Govinda*, 12 A. 129. The result of the rejection of a plaint under O. 7, r. 11 is found in r. 13 where it is provided that the rejection shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. Dismissal of a suit under this section cannot operate as *res judicata*. *Mahomed Salim v. Nabian Bibi*, 8 A. 232.

**Abandonment of claim.**—Where the plaintiff abandons a portion of the claim at the initial stage of the litigation instead of complying with an order for the payment of deficit court fee the court should not dismiss the entire claim under this section. *Ramprasad v. Bhinan*, 27 A. 151.

**Second appeal.**—Where it was discovered in second appeal that the appeal memo was not properly stamped in the first appellate court, the High Court ought not to dismiss the second appeal but to stay its own decree till the deficiency is made up. *Mohana Lal v. Nanda Kishore*, 28 A. 270. See also commentaries under s. 12.

**Disposal of suit.**—Rejection and dismissal are the penalties provided by the law if deficiency be not made up and neither of these powers can be exercised after the suit has been disposed of. *Mahadei v. Ramakrishna Das*, 7. A. 528. S. 28 does not empower the court to call upon the parties to pay the deficit court-fee after judgment has been pronounced. *Kedar Nath Goenka v. Chandra Mouleswar Prasad Singh Bahadur*, 11 Pat. 532=137 I. C. 855=1932 Pat. 228. The question of court-fee should be determined at the earliest possible opportunity. If on examining the plaint, the court finds it is undervalued, it should act under O. 7, r. 11 (b). If the matter requires further investigation, it should record evidence on the point and if it finds that the court-fee paid is insufficient, it should require the plaintiff to make good the deficient court-fee, stay further proceedings until it is made good and in default should dismiss the suit under s. 10 (ii). The Court cannot after recording findings on all the issues and dismissing the suit on merits, require the payment of additional court-fee. *Walaiti Ram v. Gopi*, 152 I. C. 799=1935 Lah. 75. Nor can it after dismissing the pre-emption suit on the merits direct the deficiency in court-fee to be deducted out of the amount deposited in court under s. 22, Punjab Pre-emption Act, *Ibid.* See further commentaries under s. 12.

**Limitation.**—Deficit court-fee paid after the time allowed and accepted by the court is proper payment although the payment was made after the expiry of the period of limitation for the suit. *Padmanand v. Ananta Lal*, 34 C. 20 F. B. But where the plaint has not been admitted and registered the view of the Allahabad High Court in *Jainte Prasad v. Bachu Singh*, 15 A. 65, is that if the payment is not made within the period of limitation, the court could not extend the period and the suit is barred. But a contrary view is expressed in the following decisions. *Dhondi Ram v. Tare*, 37 B. 330; *Valambal v. Vaithyalinga*, 24 M. 331. The Madras view is the correct one, in view of s. 149 C. P. C.

**11.** In suits for mesne profits or for immoveable property and mesne profits, or for an account, if the profits or amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the

Procedure in suits for mesne profits or account when amount decreed exceeds amount claimed.

profits or amount so decreed shall have been paid to the proper officer.

Where the amount of mesne profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed the further execution of the decree shall be stayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

**Local Amendments.—Madras.**—In place of para 2, the two following paragraphs have been substituted for Madras by s. 9, Madras Court-Fees Amendment Act V of 1922 :—

*Where a decree directs an inquiry as to mesne profits which have accrued on the property during a period prior to the institution of the suit, if the profits ascertained on such inquiry exceed the profits claimed, no final decree shall be passed till the difference between the fee actually paid, and the fee which would have been payable had the suit comprised the whole of the profits so ascertained, is paid. If the additional fee is not paid within such time as the court shall fix, the claim for the excess shall be dismissed, unless the Court, for sufficient cause, extends the time for payment.*

*Where a decree directs an enquiry as to mesne profits from the institution of the suit, and a final decree is passed in accordance with the result of such inquiry, the decree shall not be executed until such fee is paid as would have been payable on the amount claimed in execution if a separate suit had been instituted therefor.*

**Bengal.**—The following section has been substituted for s. 11 by Bengal Act VII of 1935.

11. *Where, in any suit for mesne profits or for land and mesne profits or for an account, the fee which would have been payable if the suit had comprised the whole of the relief to which the Court finds the plaintiff to be entitled exceeds the fee actually paid, the Court shall*

*Procedure in suits  
for mesne profits or  
accounts when  
amount found due  
exceeds amount  
claimed.*



*require the plaintiff to pay an additional fee equal to the amount of the excess and if such additional fee is not paid within such time as the Court may fix, the suit, or if a decree has previously been passed therein, so much of the claim as has not been so decreed, shall be dismissed :*

*Provided that, where the additional fee is payable in respect of a portion of the claim which can be relinquished, that portion only shall be dismissed.*

#### COMMENTARY.

**Scope of the section.**—This section deals with cases where the amount decreed turns out to be in excess of the amount claimed, and for which court-fee would have been already collected. Of course this cannot be taken to offend the admitted principle that a court cannot grant a decree for an amount larger than the claim. There are cases where, from the nature of the relief prayed for, a plaintiff would not be in a position to state precisely the exact amount claimed by him, *e.g.*, a suit for accounts: Order VII, Rule 2 C. P. C. provides thus “Where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed; but where the plaintiff sues for mesne profits or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, the plaint shall state approximately the amount sued for.” *Nanda Kumar Singh v. Bilas Ram*, 40 I. C. 579. It is for such cases, provision is made in this section for the collection of any excess court-fee due, where it turns out, on enquiry that the amount decreed to plaintiff exceeds his claim—approximate in almost all cases—and for which alone he had paid court-fee. As in ss 10 and 17 the object of this section is to safeguard the court-fees due to Government. This provision that after the court finds that the plaintiff is entitled to a larger amount, it should grant him time to pay and dismiss the claim if default is made is liable to be evaded in some cases by the plaintiff realising the amount out of court. In such cases after a plaintiff secures an adjudication of his claims, he can well contrive to escape the payment of the deficit court-fee. A possible remedy may be to collect the dues as a public demand as is done in some cases in Bengal, in view of the undertaking given by the plaintiffs in such cases to pay additional court-fee in case they are found entitled to a larger amount when accounts are taken.

Further it is submitted that there appears to be no necessity for putsuits for mesne profits or for land and mesne profits on a par with suits for accounts. At least in a suit for accounts as the plaintiff may be ignorant about the state of accounts, when the other side is the accounting party, there may be some justification for the concession granted to him to value his suit approximately and then be also eligible to get a decree for a larger amount on payment of court-fee.

Of course this concession is invariably abused by plaintiffs, due it is submitted to the interpretation by Courts of a plaintiff's right to value the claim as he chooses. O. VII, r 2 para 2, C.P.C. provides that in a suit on unsettled accounts, the plaintiff shall state *approximately* the amount sued for. Do plaintiffs value their suit approximately at all? Cases are not uncommon where to escape at least an initial payment of proper court-fee a ridiculously low value is advisedly put in and a nominal fee paid. At any rate in Madras, cases are not uncommon where the plaintiff values his claim at Rs. 4,000 and gets a decree for Rs. 40,000, the defendant appealing values his appeal at Rs. 100, saying that the defendant is not bound by the plaintiff's valuation. This freedom is claimed even by the plaintiff-appellant to change his value at his own sweet will and pleasure, so that the law relating to court-fees chargeable in account suits and jurisdiction is in utmost confusion. There is no necessity to extend this concession to claims for mesne profits at all. The plaintiff comes forward with a specific allegation that he is entitled to a certain amount as the income from certain properties. Why should he be permitted to enlarge his claim? It is certainly not unfair to apply in such cases the rule that a plaintiff cannot get a decree beyond what he has claimed in the suit.

In view of the mandatory provision of s. 11, no direction for the payment of the additional court fee for the excess sum decreed need be embodied in the final decree. That section casts a duty on the executing court to collect the deficit court-fee when it finds that execution is sought for an amount over and above what was claimed in the plaint. Such fee if paid by the plaintiff decree-holder can be treated as costs relating to execution and the executing court has jurisdiction to pass any order regarding it. *Lakshmanan Chettiar v. Chidambaram Chettiar*, 65 M. L. J. 526 = 145 I. C. 946 = 1933 Mad. 787. The section only furnishes one method for protecting the interest of the Crown. The proper procedure, if the appellate court after the hearing and consideration of the appeal comes to the conclusion that a larger amount is due to the appellant than what he has paid court-fees for, would be to post the case for orders and direct the appellant to pay additional court-fee and only then the judgment should be delivered and the decree allowed to be drawn up. *In re Venkatanandam*, 56 Mad. 705 = 64 M. L. J. 122 = 141 I. C. 602 = 1933 Mad. 330.

**Application of the section.**—The section provides for three kinds of suits :—

1. Suit for mesne profits pure and simple;
2. Suit for immoveable property coupled with a claim for mesne profits.
3. Suit for an account.

In cases where a claim is founded on unsettled accounts between parties, or a claim is made for past mesne profits, the plaintiff, as

required by O. VII, r. 2, C. P. C. makes an approximate value of his claim and pays court-fees thereon. It is only in cases where future mesne profits is claimed, there is the absence of the necessary data, and no court-fee is paid beforehand. This section covers both these kinds of cases, where the approximate value given in the plaint turns out to be an under-valuation, and where future mesne profits are decreed. *Ram Krisna v. Bhima Bai*, 15 B. 416; *Vital Hari v. Govind*, 17 B. 41; *Dwarakanath v. Devendra Nath*, 33 C. 1232; *Ijjatulla v. Chandra Mohan*, 34 C. 954. The section is not applicable to the claim of a creditor in an administration suit made in pursuance of a notification of the court after the passing of a preliminary decree therein, as it cannot be deemed to be a plaint. *Ramaswami Ayyar v. Rangaswami Ayyar*, 61 M. L. J. 933=34 L. W. 429=1931 Mad. 683.

Where in a suit for dissolution of partnership and accounts which was referred to an arbitrator, an award is made dividing the partnership property consisting entirely of moveables between the plaintiff and the defendant and awarding the plaintiff a sum far in excess of the amount at which the suit was valued, and the award is made a decree of court, the court can levy court-fee only on the excess amount decreed and not also on the value of the share of the properties allotted to the plaintiff. *Mohan Lal v. Nihal Chand*, 152 I. C. 608=1935 Lah. 40.

**Mesne profits.**—Mesne profits has been defined in the Code of Civil Procedure s. 2 (10) as meaning those profits which the person in wrongful possession of such property actually received, or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession. Where a suit for possession was compromised, on the terms that possession should continue with the defendant, and that he should pay to the plaintiff a certain sum every year which were embodied in the decree, and execution is taken out for recovery of such amounts which accrued due, it was held that those amounts cannot be called mesne profits and S. 11 cannot apply. *Sri Mahant Prayag Dossjee Varu v. Mogadala Kuppa Rao*, C. R. P. No. 282 of 1932 decided on 9-11-32 (unreported). Where a suit is instituted for the recovery of possession of immoveable property and for mesne profits, the latter claim can be divided into what may be styled *past mesne profits* denoting the profits which had accrued on the property during a period prior to the institution of the suit, and *future mesne profits* representing the profits which have accrued from the institution of the suit. Under the C. P. C. of 1882, the mesne profits could be determined in execution proceedings *vide* s. 244 (a) (b) of that Code. *Kedar Nath v. Ananda Prasad*, 52 I. A. 182=4 Pat. 507 P. C.=88 I. C. 482. It was decided in *Puranchand v. Ray Radha Kissen*, 19 C. 132, that in a suit for possession with mesne profits, the proceedings in determining the amount of mesne profits are not proceedings in execution of a decree in regard to any fixed sum, but merely a continuation of the original suit, and carried on in the same way as if

a single suit was brought for mesne profits by itself. The procedure is embodied in O. 20 r. 12 C. P. C. which is as follows:—

(1) Where a suit is for the recovery of possession of immoveable property and for rent or mesne profits, the court may pass a decree—

- (a) for the possession of the property,
- (b) for the rent or mesne profits which have accrued on the property during a period prior to the institution of the suit or directing an enquiry as to such rent or mesne profits,
- (c) directing an enquiry as to rent or mesne profits from the institution of the suit until,
  - (i) the delivery of possession to the decree-holder,
  - (ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the court or
  - (iii) the expiration of three years from the date of the decree whichever event first occurs.

(2) Where an enquiry is directed under clause (b) or clause (c) a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such enquiry.

Accordingly where past mesne profits are claimed, the court can straightaway pass a decree for same, or direct an inquiry for its determination. In cases where future mesne profits are claimed, the court will have to direct a similar inquiry for its determination. In either case, where such an inquiry is to be held, the court should pass a preliminary decree, and, on the ascertainment of the mesne profits, pass a final decree in accordance with the result of such inquiry. In no case, as the law now stands, could the mesne profits be directed to be ascertained in execution proceedings. Under the present Code, the court can determine past and future mesne profits in the suit itself and make a decree called a final decree for the mesne profits capable of execution. The first paragraph of this section would apply to such a decree also. *Ram Golam Sahu v. Chintamani Singh*, 5 Pat. 361 = 1926 Pat. 218 F. B.

The law requires the plaintiff in a claim for mesne profits to assess the amount of mesne profits and to pay court-fee on that amount. When on a subsequent enquiry an assessment of mesne profits is made if any further court-fee is payable it has to be paid. On payment of the court-fees regular decrees come into existence. *Collector of Etawah v. Bindrahan*, 1931 All. 538.

**Procedure for the collection of the additional fee.**—The scheme of the section is to differentiate cases where there is a decree already passed for mesne profits which is found to exceed the claim, and the case where the mesne profits are left to be ascertained in execution proceedings, and the inquiry shows that the profits so ascertained exceed the profits claimed. The latter is provided for in

para 2 of the section. In the light of the provision in O. 20 r. 12 C. P. C. it appears that this portion of the section is inapplicable to the current law of procedure. The opening clause of the second paragraph of the section which is to the effect "Where the amount of mesne profits is left to be ascertained in the course of the execution of the decree" clearly indicates that the provision is a relic of the ancient law of procedure.

**"Decree."**—In the case of a suit for partition and mesne profits the term "decree" should be taken to refer to the final and not the interim decree in a suit. *Natharsa Rowther v. Mohamed Rowther*, 59 I. C. 385.

**Decree for mesne profits.**—Cases where mesne profits are claimed and decreed can be classified as follows:

**Past mesne profits.**—(a) This may be ascertained in the suit, and a decree passed. In case the amount so found due exceeds the claim or the amount at which the plaintiff valued the relief sought, the court should not execute the decree till the difference in the court-fee is made up. S. 11, paragraph 1.

(b) In case the court does not determine the mesne profits forthwith, it can direct an enquiry regarding same. In that case the court should pass a final decree incorporating the amount of mesne profits ascertained. O. 20, r. 12 (2) C. P. C. There is nothing in the Code that necessitates the payment of the excess court-fee before the passing of the final decree, except of course where it is read with the Madras Amendment to s. 11 of the Court-fees Act. In all other cases where an enquiry into mesne profits is directed, the final decree is passed as a matter of course, and steps for the realization of any excess fee payable has to be taken only in later proceedings. It is provided in paragraph 2 of s. 11 that in such cases of determination of mesne profits, the execution of the decree shall be stayed till the difference is made up. Paragraph 1 of the section can as well be applied to this case also. The penal provision in the last sentence of the section to the effect that if the additional fee is not paid within such time as the court shall think fit, the suit shall be dismissed seems to be obviously inappropriate for the reason that the inquiry into mesne profits is one that is anterior to the passing of the final decree (O. 20, r. 12 C. P. C.) and once the final decree is passed the court has no jurisdiction to vacate the whole or part of its own decree for non-payment of additional court-fee. The penal clause would have been capable of enforcement at a time when a different rule of procedure prevailed, and there being no necessity for the incorporation of the ascertained amount in the decree, there was the mere ascertainment of the claim in execution proceedings. In that case, if the excess fee is not paid the court could enforce the penalty of dismissing the 'suit'. Even here, the use of the word "suit" is quite unfortunate and misleading. It certainly cannot refer to the suit that has been already decreed, and in which an enquiry for mesne profits in execu-

tion proceedings has been directed. *Fulchand v. Bai Ichha*, 12 B. 981 In *Kewal Krishen v. Sookhani*, 24 C. 173, their Lordships of the Calcutta High Court comment as follows on the meaning of the expression "the suit shall be dismissed." "It seems clear that those words are intended to have a different signification from the words used in the former part of the section. . . . It is contended that inasmuch as the suit had been already decreed, certainly so far as the possessor of the property is concerned, it cannot have been intended that the words 'the suit shall be dismissed' should mean that the entire suit shall be dismissed. It is argued that the proper meaning to be put on these words is merely that the application for execution shall be dismissed, leaving it open to the decree-holder to make a fresh application. We are of opinion that this is not the correct construction, having regard to the wording of s. 10. According to that section, when an insufficient court-fee has been paid upon a plaint, the court shall require the plaintiff to pay so much additional fee as would have been payable and the trial of the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the court shall fix, the suit shall be dismissed and by analogy we are of opinion that the meaning of s. 11 is that in case the additional fee required in respect of the excess mesne profits is not paid, execution of the decree shall be stayed until it is paid, and if it is not paid within the time fixed by the court, then the *suit that is to say, the claim for those mesne profits* shall be dismissed. . . . The word 'suit' can fairly be construed as the suit or claim in respect of the mesne profits in respect of which the court fee payable has not been paid within the time fixed by the court." The word "suit" occurs in four places in the section, twice in the first paragraph and twice in the second paragraph. The word means the entire suit in all places but the last where alone it has to be construed differently, forming an exception to the ordinary rule of interpretation of statutes, that the same expression should not be given different meanings in the same section. Whatever that may be, if we have to give such a construction as would not lead to an absurdity, the word 'suit' has to be construed as the claim in respect of mesne profits about which an inquiry was directed to be held in execution proceedings, as permissible under the Code of 1882. Of course, if the court-fee payable in respect of such mesne profits was not paid, the court could enforce the penal clause by dismissing that claim; and for the reasons already stated this penal provision cannot be enforced by courts now.

**Madras Amendment.**—For paragraph 2 of the original section, two paragraphs have been substituted by the Madras Amendment Act. That purports to apply only to cases where an inquiry into mesne profits is directed. Paragraph 1 of the Amendment deals with past mesne profits and paragraph 2 with future mesne profits. The amendment provides a penalty for non-payment of the fee within the time fixed by court. If default is committed and not condoned by court "the claim for the excess" shall be dismissed. This provision,

both in its substance and form, is a distinct improvement on the corresponding provision, *viz.*, paragraph 2 of s. 11, inasmuch as in the amended section the words used are "the claim for the excess", thereby steering clear of the dubious expression used in the main Act to the effect that the suit shall be dismissed.

**Preliminary and Final Decrees.**—"A final decree for past mesne profits is passed either straightaway, or, after a preliminary decree directing an inquiry as to the amount of the same; in the latter class of cases, the provisions of the amended s. 11 of the Court-Fees Act (Mad.) would have operation, with the result that no final decree shall be passed till the extra Court-fee is paid. The wordings of paragraph 2 of s. 11 do not apply to a case where a final decree for past mesne profits is straightaway passed fixing the amount of such mesne profits and without a preliminary decree directing an inquiry as to the amount of the same. In such a case, and to such a final decree, the first paragraph of s. 11 (which is the first paragraph of the old section also) would apply; that paragraph directs that the decree is not to be executed until the extra court-fee is paid. Why it is provided in the second paragraph that when an inquiry is directed, no *final decree* shall be *passed* for the extra amount of past mesne profits, and that the claim for the said excess shall be dismissed under the second paragraph unless the extra court-fee be paid; and why a different rule is adopted in the first paragraph, where it is provided that the decree shall not be *executed*, until the extra court-fee is paid; all this, is not quite clear. Why it is not provided in the second paragraph of s. 11 that a *final decree* might be passed for a higher amount of past mesne profits found due, but that the decree for the excess could *not* be *executed*—unless the extra court-fee is paid, is also not clear. If the latter alternative had been adopted, there would be no inconsistency of any sort between the provisions of s. 11 and of Rule 12; whereas now as regards passing a decree for past mesne profits there seems to be an apparent inconsistency between the two provisions. No doubt the two provisions could be read together, and the provisions of Rule 12 enabling a Court to pass a final decree straightaway may be said to be governed by the first paragraph of s. 11 of the Court-Fees Act." See *Ramalinga Seethupathi Ambalam v. Andiappan Ambalam*, 54 M. 980=1931 Mad. 717=61 M. L. J. 424 at p. 427. See also under the heading '*Future mesne profits*' *infra*.

**Bengal amendment.**—By Act VII of 1935, a new section 11 has been substituted for this section in the Act. The procedure is made clearer and simpler. It provides for suits for (1) mesne profits, (2) land and mesne profits and (3) an account. It provides that if on enquiry—evidently after a preliminary decree—it is found that the plaintiff is entitled to a larger sum than what he estimated in his plaint and on which he paid court-fee, then, the Court should require the plaintiff to pay the additional court-fee due and if it is not so paid dismiss the suit. The whole suit will stand dismissed subject to two exceptions. One such case is where a decree has been passed in the

suit, only so much of the claim as has not been so decreed shall be dismissed and not the entire claim. The second exception is found in the Proviso, where it is laid down that where the additional fee is payable in respect of a portion of the claim which can be relinquished, that portion alone should be dismissed. With reference to cases forming exception 1, it is submitted it is not quite clear what cases are saved thereby from total dismissal. The proviso provides that where the claim for which additional stamp is payable is detachable from the original claim, that additional claim only shall be dismissed. And in every one of the three classes of suits, covered by this section, the additional claim cannot but be detachable. Therefore when such additional claim is so detachable, a decree can be passed by the Court only for the original claim. Under these circumstances the necessity for safeguarding "the decree already passed" from being vacated does not seem clear.

**Future mesne profits.**—This means mesne profits accruing after the institution of the suit. Under Order 20 Rule 12 (c) C. P. C. this could not be decreed forthwith as in the case of past mesne profits and the court has to direct an enquiry for its determination. After its ascertainment, a final decree will have to be passed. Section 11, it has been held by the Bombay High Court, does not apply to future mesne profits. In *Ramakrishna v. Bhima Bai*, 15 B. 416, the plaintiff prayed for mesne profits only from the institution of the suit till the property in question was restored to him and the decree awarded him those profits and directed that they should be determined in execution. After the property was restored to the plaintiff he applied in execution of the decree to have the amount of mesne profits determined which being done the question arose as to whether the plaintiff could proceed to further execute his decree without paying court-fee on the amount so awarded in execution. It was held that no court-fee was required and that s. 11 of the Court-Fees Act applies to a claim for mesne profits for which an amount can be and has been *claimed* by the plaintiff and in respect of which some fee has been actually paid. But there is a difference of opinion on this question as to whether court-fee is payable on future mesne profits. The decision in 15 B. 416 has not been followed by the Calcutta High Court, which held in *Dwarka Nath Biswas v. Devendra Nath*, 33 C. 1232, that where a plaintiff asked for future profits and paid court-fees on the amount claimed as past mesne profits only, the provisions of s. 11 were applicable in respect of the whole suit. This was referred to with approval in the Full Bench decision of the same Court in *Ijjatulla v. Chandra Mohan*, 34 C. 954. In that case the question was as to the forum of appeal by the defendant in a case where the value of suit was over Rs. 5,000, if the future mesne profits decreed were included. The plaintiff had already been called upon to pay court-fee on that amount and he had paid it on which the decree was signed and sealed. The court held that the future mesne profits



also must be included in the valuation of the suit, so that the appeal lay to the High Court. Mukerji, J., discusses the position as to future mesne profits at length. He refers to the decision in 15 Bom. 416 and dissents from it. He observes: "In my opinion there is no substantial distinction for our present purpose, between mesne profits antecedent and subsequent to the institution of the suit." Then the decision in 33 C. 1232 aforementioned is referred to with approval as laying down the law on the point. As against these decisions there is only an observation in *Bunwari v. Daya Shanker*, 13 C. W. N. 815, that 'as pointed out in 15 B. 416 and 21 M. 371, a plaint or memorandum of appeal is not liable to stamp duty in respect of mesne profits subsequent to suit.' See also *Bhupendra Kumar Chakravarthi v. Purnachandra Bose*, 43 C. 650. The Patna High Court follows the decision of the Calcutta High Court in 34 Cal. 958 and holds that court fee is payable on future mesne profits but it can be exacted only after the amount has been ascertained after enquiry, no court-fee being payable on an application for ascertainment of mesne profits. *Ram Golam Sahu v. Chintaman Singh*, 5 Pat. 361=1926 Pat. 218 (F. B.) See also *Jagadip Sahay v. Khajuri Sahu*, 108 I. C. 801 in which the above decision is followed. To the same effect is the decision of the Rangoon High Court in *Daw Soe v. Ko Pu*, 1930 Rang. 246. The view of the High Court of Allahabad also is that court-fee is payable on future mesne profits. *Chidilal v. Kirath Chand*, 2 A. 642. As regards Madras the matter is clear and provided for by the amendment and fee is chargeable on future mesne profits.

Paragraph 3 (Mad.) deals with cases of future mesne profits. But there is no specific provision to cover cases where final decree for future mesne profits at a particular rate is passed straight-away without a preliminary decree directing an inquiry as to the amount of the same. The question as to whether court-fee is payable on future mesne profits at the time of execution in such cases has been left open in *Ramalinga Sethupathi Ambalam v. Andiappan Ambalam*, 54 Mad. 980=61 M. L. J. 424=1931 Mad. 717. But where an inquiry is directed under clause (c) of r. 12 (2), s. 11 of the Court-Fees Act prohibits not the passing of the final decree but the execution thereof until the necessary court-fee is paid. "It is a question for consideration whether the same policy should not be adopted also with reference to past mesne profits where a decree directs an inquiry into the same, and whether for the sake of uniformity—if not for other reasons—paragraph 2 of s. 11 should not be amended, enabling the court to pass a final decree in such cases, but prohibiting execution in respect of the extra amount of such mesne profits unless the necessary court-fee be paid \* \* Difficulties could be avoided if courts when called upon to pass decrees relating to mesne profits, follow strictly the provisions of O. 20, r. 12, Civil Procedure Code, read with s. 11 of the amended Court Fees Act." *Ibid* In a case where the decree gives the plaintiff possession of certain properties and mesne profits past and future, the decree-holder is entitled to execute his decree with

reference to possession of immoveable property irrespective of the question whether court-fees has or has not been paid on the future mesne profits decreed to him by the same decree. *Ramalinga Sethupathi Ambalam v. Andiaappa Ambalam*, 54 M. 980 = 61 M. L. J. 424 = 1931 Mad. 717.

In the section as amended recently in Bengal, there is no mention of future mesne profits and it is not clear whether the position that court-fee is leviable on future mesne profits as enunciated in the decisions in 33 C. 1232 and 34 C. 954 remains unchanged.

**Levy of court-fee on future mesne profits.**—The court has no jurisdiction to require the plaintiff to pay additional court-fee upon his claim for future mesne profits as a condition for proceeding with the investigation of the claim and has no jurisdiction to dismiss the proceedings if the additional court-fee is not paid. *Ram Golam Sahu v. Chintaman Singh*, 5 Pat. 361 = 1926 Pat. 218 F. B. Court-fee will become payable when mesne profits have been ascertained, *Ibid*; *Jagdip Sahay v. Khajuri Sahu*, 108 I. C. 801.

Mesne profits, be it past or future, will have to be incorporated in the final decree in any event; and there being nothing in O. 20 r. 12 C. P. C. that justifies the postponement of the passing of the final decree for non-payment of additional court-fee, a final decree is a matter of course after an enquiry. But see 1931 All. 538 cited *supra*. The decision in *Swaminatha v. Muthuswami*, 20 M. L. J. 98 is no longer good law having been pronounced before the Madras Amendment of clause 2 of the section.

**Computation of fees.**—In the case of past mesne profits where the claim turns out to be less than the amount found due, the fee payable is the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits, whether paragraph 1 or 2 of the section applies. But there is a difference regarding the computation of fees on future mesne profits, as per the Madras amendment. Paragraph 3 of the section as amended is to the effect that where the decree directs an inquiry as to future mesne profits, the fee payable is the amount that would have been payable on the amount claimed in execution if a separate suit had been instituted therefor. This method of computation is calculated to increase the burden of the fee over what is provided for in the main Act. In effect, as per the Madras amendment, future mesne profits is treated as distinct subject and on the analogy of s. 17 an additional court-fee is levied on such claim. If, as per the unamended Act, the future mesne profits is clubbed with past mesne profits, and the fee is computed thereon, giving credit to the court-fee already paid, the amount that will be found payable by the decree-holder would in many cases be found less than what he would have to pay, if, according to the Madras amendment, the fee is calculated on future mesne profits as a distinct entity by itself, and such an amount as would be payable by a plaintiff if

the future mesne profits formed the subject-matter of a separate suit is levied from him. In this respect also, there does not seem to be any apparent justification for the differentiation in the computation of fees; in the case of past and future mesne profits. In *Dawood v. Rahiman*, 62 I.C. 175 (Burma) it was held that the fee is payable on the difference between the amount of mesne profits claimed in the plaint and the amount ascertained to be due subsequent to the filing of the suit.

**Appeal.**—Para 2 of s. 11 applies only to a claim for mesne profits accruing subsequently to the date of suit, of which the plaintiff is unable to calculate the approximate value, because he cannot say for how long a period he is likely to be kept out of possession, and to a case in which the mesne profits calculated in execution exceed the original claim. Where therefore a definite value is placed in the plaint on the mesne profits claimed, and the suit is decreed, the defendant appealing from the decree must pay court-fee calculated *ad valorem* on the value of the mesne profits, claimed in the plaint, whether the suit is only for mesne profits or whether the claim for recovery of mesne profits accompanies a claim for recovery of land. (*Kanchan Mandar v. Kamini Prashad*, 15 I. C. 572). Where the amount of mesne profits ascertained in execution exceeds the amount definitely claimed in the plaint, and the defendant appeals against the whole decree, what is the court-fee payable on the appeal? Is it the fee calculated *ad valorem* on the amount that was originally claimed in the plaint plus a fixed fee as for mere application as regards the excess, or the fee calculated *ad valorem* on the entire amount ascertained in execution? The Taxing Judge of the Patna High Court has decided recently dissenting from the decision in *Sheodhin Singh v. Naranji Lal Ram Marwari*, 129 I. C. 652 and agreeing with the opinion expressed by a Division Bench of the same court in *Kedar Nath Goenka v. Chandra Mouleswar Prasad*, 11 Pat. 532=137 I. C. 855=1932 Pat. 228, that *ad valorem* court-fee is payable in such a case on the entire amount, on the ground that appeal differs from a mere application for ascertainment of mesne profits, and that court-fee has to be paid under Sch. I, Art. 1 according to the value of the subject-matter in dispute in the appeal. *Dhanukdhari Pandey v. Ramadhikari*, 12 Pat. 188=142 I. C. 617=1933 Pat. 81. The general rule enunciated in this case was that, in an appeal against a decree granting mesne profits, *ad valorem* court-fee was payable on the amount for which the appellant sought to avoid liability, or on the amount by which he sought to enhance the value of his decree. This rule applies to all appeals from decisions determining the amount of mesne profits, whether the profits may have accrued before suit or after the date of the institution of the suit and no distinction can be drawn between a case where the appeal arose out of a suit for recovery of mesne profits and a case where the suit was for recovery of possession of land, with no claim for antecedent mesne profits, but with a claim for mesne profits *pendente lite*. *Sidheswari Prasad v. Ram Kumar Rai*, 12 Pat. 694=144 I. C. 684=1933 Pat. 234.

Memorandum of appeal against a final decree under O. 20, r. 12 (2) C. P. C., in respect of subsequent mesne profits, should be stamped with *ad valorem* court-fee calculated on the amount of mesne profits in dispute. *Pilla Balaram Naidu v. Pilla Sangam Naidu*, 45 M. 280 = 69 I. C. 722 = 14 L. W. 730 = 42 M. L. J. 184. Where an appeal is preferred from a decree granting future mesne profits the fee payable on the memorandum of appeal is to be calculated as up to the date of appeal. *In re Punya Nahako*, See 50 M. 488.

**Interest**—There is no provision in the Act under which a plaintiff can be called upon to pay court-fee on the interest which accrues after the institution of the suit. The holder of a mortgage decree wao has already paid court-fee on the amount due at the date of the suit can execute a decree for a higher amount on account of interest *pendente lite* without being liable to pay additional court-fee thereon. *Thakan Chaudhuri v. Lachmi Narain*, 152 I. C. 244 = 15 Pat. L. T. 548 = 1934 Pat. 571 (S. B.) In a suit on a mortgage a decree was passed by the lower court for an amount less than the amount claimed in the plaint. On appeal the High Court decreed the full claim with interest and the amount according to the High Court's decree came to much in excess. It was held that there was no provision in the Court-Fees Act under which a party may be called upon to pay additional court-fees upon the excess found due by the appellate court and the judgment having been passed, the office cannot refuse to draw up the decree in terms of the judgment. *Debi Lal v. Koleshar Gir*, 105 I. C. 395 = 1928 Pat. 58. The section does not apply in the case of interest that accrued on the decretal amount. *Krishna Row v. Antaji Virupaksha*, 12 Bom. H. C. R. 227. There is no provision of law authorising the assessment of additional court-fee by reason of the accrual of interest *pendente lite* where the plaintiff appeals. But in an appeal by the defendant it may be otherwise. *Sadhu Sareni v. Lala Braham deo Lal*, 103 I. C. 592 = 1927 Pat. 230.

## Jurisdiction.

**1. Suits.**—In cases where it is open to the plaintiff to fix an approximate valuation of his suit as in the cases contemplated by this section, *viz.*, suits for accounts, determination of mesne profits and so forth, the question arises as to whether the court is competent to pass a decree which goes beyond the limit of its pecuniary jurisdiction. On this point there is a conflict of views between the several High Courts. One view is that the Court has jurisdiction to pass such a decree in case it had such jurisdiction at its inception. This is the view in ALLAHABAD, MADRAS, BOMBAY and SIND. A contrary view is that a court though it had jurisdiction when the approximate value given by the plaintiff was within it, it is incompetent to pass a decree in case the amount to be decreed is beyond the limit of its pecuniary jurisdiction. This is the view in CALCUTTA, and PATNA follows suit as the latter is only a portion carved out of the jurisdiction of the CALCUTTA High

Court. A third view is that held in LAHORE where the proper procedure is stated to be to *transfer* such cases to a court of competent jurisdiction at the stage at which the trial courts come to the conclusion that the ultimate decree may exceed its pecuniary jurisdiction. A fourth view is that entertained by the RANGOON High Court which holds that the proper course will be to return the plaint for presentation to the proper court.

**Calcutta.**—The Calcutta High Court takes the view that if a suit is instituted in a court of limited pecuniary jurisdiction, it is incompetent to pass a decree beyond the maximum limits of its jurisdiction. The point of view and the arguments therefor are set out with great clearness in the following decision. *Golap Singh v. Indra Kumar Hazra*, 13 C. W. N. 493. "The question is whether a court of restricted pecuniary jurisdiction like the court of a District Munsif is competent to make a decree in a suit for accounts for an amount in excess of the pecuniary limit of its jurisdiction. Upon first principles the court has no power to do that. Such authority is conferred by the sovereign power which organises the Court and is to be sought for in the general nature of the powers of the court or in statutory provisions specially enacted for the purpose. To render the jurisdiction by a court complete, it must have jurisdiction over the subject-matter, that is, it must have power to deal with the subject involved in the action. This jurisdiction over the subject-matter can only be given by law. If a court of limited pecuniary jurisdiction therefore took cognizance of a suit in which the sum claimed was larger than the amount over which the court had jurisdiction, any judgment it might give would be void. \* \* \* \* The uncertainty as to the amount which a plaintiff suing for an account is entitled to recover doubtless makes a difference, in view of which the Legislature allows him to value his suit at an approximate amount in the first instance. But it does not follow that he can, by reason of this circumstance, ultimately obtain from the Munsif a decree for a sum in excess of the limit of the pecuniary jurisdiction. In a case of that description it is manifestly just on principle that if the result shows that the plaintiff is entitled to a sum in excess of the limit of the pecuniary jurisdiction of the court in which he had instituted his suit, the judgment ought to be only for the sum which limits the jurisdiction. In other words *the plaintiff should be called upon to relinquish the excess and this places the case formally within the pecuniary jurisdiction of the court of his deliberate choice.* The court may in such a case remit the excess or presume the excess to be remitted. To put the matter in another way, when a plaintiff values his suit at an approximate amount and institutes it in a court of limited pecuniary jurisdiction, *he must be presumed to seek a decree for a sum which in no event will exceed the highest amount which limits the jurisdiction by the court.* To take any other view would enable the plaintiff to commit a fraud upon the court and upon the law which regulates its jurisdiction and would further lead to extraordinary complication. \* \* \* \* We think it

is a manifestly reasonable view to take of the matter that although a plaintiff is almost *ex necessitate* permitted at the initial stage to value his claim approximately and obtain in the end a decree for a higher sum than what he had expressly claimed, when he instituted the suit in a court of limited pecuniary jurisdiction he must by implication be taken to have restricted the highest for which he could possibly obtain a decree as the limit fixed by the legislature as the limit of the pecuniary jurisdiction of the court.

But the case of future mesne profits and the consequent increase in the value of the decree to the plaintiff stands on a different footing altogether. It has been held in *Bidhyadar Manindra Nath*, 53 Cal. 14 F. B.=1925 Cal. 1076, that where a suit is brought for the recovery of possession of land, and mesne profits *pendente lite* are either claimed or assessed at a sum beyond the pecuniary jurisdiction of the court, the court has still jurisdiction to fix such mesne profits and pass a decree for a sum beyond its pecuniary jurisdiction. The value of such a suit for purposes of jurisdiction is the value of the immoveable property plus mesne profits up to the date of the suit where such profits are claimed. If a suit is rightly entertained as within the jurisdiction of a court and a decree passed, its power to grant the proper and adequate relief is not affected by any event which increases the value of the relief during the pendency of the suit. The value of such a suit for the purposes of jurisdiction is the value of the immoveable property plus mesne profits up to the date of the suit. Mesne profits after the date of the suit do not form part of the cause of action on which the suit is brought.

**Patna.**—Of course the view of the Patna High Court only echoes that of the Calcutta High Court as has been more than once expressed by their Lordships of the Patna High Court that as the jurisdiction of that Court was carved out of the jurisdiction of the Calcutta High Court, settled views of the latter court are usually followed by Patna.

**Allahabad.**—In *Madho Das v. Ramji Patall*, 16 A. 286, it was held that the pecuniary jurisdiction of a civil court on its original or appellate side is, ordinarily speaking, governed by the value stated by the plaintiff in his plaint. And if a suit having regard to the valuation in the plaint, is within the jurisdiction, such jurisdiction is not ousted by the court finding that a decree for a sum exceeding the limit of its pecuniary jurisdiction should be given to the plaintiff. In *Sudarshan v. Ram Prasad*, 33 A. 97, it was held that where a suit as filed is within the pecuniary jurisdiction of a court, the jurisdiction of the court is not ousted by the subsequent discovery that a sum is in fact due to the plaintiff exceeding the pecuniary limits of the jurisdiction.

**Bombay.**—The Bombay High Court takes the same view as the Allahabad High Court. The mere fact that a decree for an amount exceeds the pecuniary limit of the jurisdiction of the court passing it, is not sufficient to establish that it was beyond the jurisdiction and

a nullity. The jurisdiction of a court is determined under the Civil Courts Act by the valuation in the plaint and not by the result of the decree, whatever it might turn out to be. *Ambadas v. Vishnu*, 28 Bom. L. R. 1461=1927 Bom. 83. See also *Lakshman v. Babaji Bhatkar*, 8 B. 31. "The jurisdiction of a court depends on the valuation of the claim as made in the plaint and especially in a suit for accounts, the jurisdiction to pass a decree for an amount beyond the pecuniary limits of the jurisdiction of the court is not excluded when it is found that the amount is one beyond that limit. See *Shamrao Pandoji v. Neloji Ramaji* 10 B. 200; *Ramachandra Baba v. Janardhan Apaji*, 14 B. 19; *Ambadas v. Vishnu*, 28 Bom. L. R. 1461. Thus there are numerous authorities to the effect that if in taking accounts the sum found due is greater than the maximum jurisdiction of the trying court its power to pass such a decree is not thereby affected." *Krishnaji Vinayak v. Motilal*, 31 Bom. L. R. 476. See also *Ishwarappa v. Dhanji*, 56 Bom. 23=34 Bom. L. R. 44=1932 Bom. 111.

**Madras.**—The leading case on the subject is found in *Putta Kannyya Chetti v. Rudrabattu*, 40 M. 1. "Where a District Munsif passed a decree for more than Rs. 5,000 in a suit for accounts wherein the plaintiff valued the subject-matter of the suit at an amount within the pecuniary jurisdiction of the Munsif, it was held that under s. 13 of the Madras Civil Courts Act (III of 1873) the appeal from the Munsif's decree lay to the District Court and not to the High Court. The question depends on the proper construction of s. 13 of the Madras Civil Courts Act. The appeal lies to this Court if the amount or value of the subject-matter of the suit not of the appeal, exceeds Rs. 5,000. Section 12 of the same Act which prescribes the original jurisdiction of civil courts confers on District Munsifs jurisdiction over all original civil suits of which "the amount or value of the subject-matter does not exceed Rs. 2,500", and presumably the expressions are used in the same sense in both the sections. The Act itself contains no rates and prescribes no method of arriving at the amount or value of the subject-matter of the suit except where the subject-matter is land, house or garden in which case the value is to be fixed in the manner prescribed in the Civil Courts Act, s. 14. The Suits Valuation Act of 1887 extended the principle of s. 14 of the Civil Courts Act, and s. 8 enacted that except in certain classes of suits, with which we are not now concerned, in all others where court-fees are payable *ad valorem* the value as determinable for the computation of court-fees and the value for the purposes of jurisdiction shall be the same. In the present case *ad valorem* court-fees are payable and to fix the value of subject-matter of the suit for the purposes of jurisdiction we have to turn to the Court-Fees Act. Under the Act, the court-fee is assessed in suits for accounts—this is a suit for accounts—on the amount at which the relief sought is valued in the plaint. Under O. VII, r. 2, Civil Procedure Code, where the plaintiff sues for an amount which will be found due to

him on taking unsettled accounts he must state *approximately* the amount sued for. These provisions make it clear that the plaintiff has a right to value the relief he claims in suits for accounts which value can only be approximate as very often he may not be in a position to fix with any precision the amount which finally he may be entitled to. There is another class of suits, *viz.*, those for recovery of mesne profits where also the plaintiff may not be in a position to know precisely what amount he is entitled to. In this case also the plaintiff is entitled to claim a certain amount approximately and is bound to pay court-fees on that amount in the first instance. In these two classes of suits the plaintiff can obtain a decree for more money than what he has approximately claimed in the plaint, and as the basis of assessment for court-fees is the amount which he claims, and in cases where he gets more than what he approximately claims, what he in fact gets, he is obliged to pay for the extra amount which he has obtained; and this obligation is enforced by certain penalties (*see* s. 11 of the Court-Fees Act.) It is to be observed that the levy of the extra fee does not necessitate any amendment in the valuation of the suit and does not affect the validity of the adjudication. In certain cases, which after the change introduced in the new Code of Civil Procedure cannot now happen, the suit itself may be dismissed for non-payment of the extra court-fee. In those classes of cases, it is obviously inconvenient if not impossible, to change the value according to the actual amount found to be due, for the amount may be varied in appeal which again may be varied further in appeal till you reach a final adjudication in a court of last resort which may not be *res judicata* on a retrial of the same matter in a court competent to take cognizance of the suit according to that adjudication. The court which has jurisdiction to try the original suit must then depend on the amount or value of the subject matter of the suit as fixed by the plaintiff and amidst the conflict of opinions on other matters there is none on this. The further question is, can the amount or value of the subject-matter change or be changed by the plaintiff, so as to affect (a) the jurisdiction of the trial court, (b) the power of the court to give relief in accordance with its adjudication even though the value of such reliefs exceed the pecuniary limits of its jurisdiction, (c) the forum of appeal. \* \* The value of the subject-matter of the suit must be its value at the institution of the suit (O. II, r. 3, clause 2); for instance in a suit for recovery of ryotwari land, the fact that Government increased the assessment during the pendency of the suit cannot change the value so as to affect the jurisdiction of the court. \* \* We are therefore of opinion that in every case when the court is seized of jurisdiction it cannot and does not lose it by any change in the value of the subject-matter of the suit after the institution of the suit or by the precise ascertainment of its value in cases which do not admit of such ascertainment at the time of institution, except when the plaint is allowed to be amended; and that is not really an exception. \* \*



On the same principle we think the court can award such sum as it finds due to the plaintiff although such sum is above the pecuniary limits of its jurisdiction. This can happen only in suits for accounts or mesne profits, as in all other cases the plaintiff without amending his plaint cannot get more than what he claims; even in suits for accounts or mesne profits, the plaintiff does not really get more than what he asks, for what he prayed in those suits is not a definite sum but whatever sum the plaintiff is found ultimately entitled to, and the amount fixed approximately is for the purpose of determining the court which has jurisdiction to try the suit. The decision of the court in *Arogya Udayan v. Appachi Rawthan*, 25 M. 543 is we think conclusive on this question.

"The fact that the valuation in certain cases is approximate (that is the word used in the Code of Civil Procedure,) not nominal as said in certain decisions, is no reason for holding that when it is precisely ascertained that must be the value of the suit; for whatever may have been the position before the Suits Valuation Act was enacted, by virtue of s. 8 of that Act whenever *ad valorem* court fees are payable the value of the suit as computed for that purpose is to be the value of the suit for the purposes of jurisdiction; and no distinction is made between original and appellate jurisdiction. In certain cases, and the present is one of such, for the purposes of court-fees the plaintiff has a right to fix his own valuation of the suit in the plaint and he is also bound to state it in his plaint. Though additional court-fees are payable under s. 11 that does not, as already stated, change the value of the subject-matter of the suit for purposes of jurisdiction."

**Sind.**—The views of the several High Courts are discussed and the view of the High Court of Madras is approved and followed. It was held by a bench of the Judicial Commissioner's Court in *Hotchand Uttamchand v. Tajumal Mulchand*, 89 I. C. 353 = 1925 Sind 324, as follows:—"The competence of an inferior court to pass a decree in excess of the pecuniary limit of its jurisdiction has been differently answered by different High Courts. The view of the Calcutta High Court as propounded by Mukerji, J., in *Golap Sundari Devi v. Indra Kumar Hazra*, is that the court of limited pecuniary jurisdiction cannot pass a decree for an amount in excess of limits, and that in suits where the plaintiff is permitted by law to value his claim tentatively for purposes of court-fees and where such tentative value determines the value for purposes of jurisdiction, it is open to the court to pass a decree for the amount which does not exceed the pecuniary limits of the court and the court may in such a case remit any excess found due or presume the excess to be remitted. The learned judge was of opinion that to take any other view would enable the plaintiff to commit a fraud upon the court and upon the law which regulates its jurisdiction and would forthwith lead to extraordinary complications, as it would be open to a plaintiff to value his claim for accounts at an insignificant

sum, to have his case tried by the court of the lowest jurisdiction and then to obtain a decree for a sum much in excess of the amount which the Legislature had fixed as the highest limit of the pecuniary jurisdiction of that court, and it would also lead to a further difficulty of deciding the forum of appeal against such decisions. *Gulab Sundari Debi's case* has been followed and acted upon by the Calcutta High Court in *Panchorom Teckadar v. Kinu Haldar*, 40 C. 56=15 I.C. 252; *Bubendra Kumar Chakravarti v. Poornachandra Bose*, 43 C. 650=8 I. C. 34; *Sarada Sundari Basu v. Akramanessa Khatun*, 51 C. 737=1924 Cal. 783=71 I. C. 747 and in *Herigi Bai v. Jamshedji*, 21 I. C. 783=15 Bom. L. R. 1021, a bench of the Bombay High Court consisting of Sir Basil Scott, C. J. and Beaman J. have expressed their complete agreement with the view of Mukerji J. On the other hand both the Allahabad High Court and the Madras High Court have taken a contrary view and have held that court of limited pecuniary jurisdiction is competent to pass a decree for an amount in excess of its pecuniary limits, provided it had jurisdiction to entertain the suit at its inception.\* *Madho Das v. Ramji Patak*, 16 A. 286; *Sudharsana Das Sastri v. Ram Prasad*, 33 A. 97=7 I. C. 385; *Khudajiatal Kubra v. Amina Khatun*, 46 A. 250=1924 All. 388=80 I. C. 413; *Ratnaswami Chetti v. Ratnambal*, 27 M. L. J. 388=1 L. W. 446=24 I. C. 135 and *Putta Kanyya Chetti v. Rudra Batala Venkata Narasyya*, 40 M. 1=39 I. C. 439=32 M. L. J. 228=5 L.W. 580. *Prima facie* the theory propounded by Mukerji J. in *Gulab Sundara Debi's case* would appear to be based on cogent reasons. \* \* There is no express provision in any of the statutes declaring that when the court is once seised of a case, it shall not grant relief either primary or incidental which the parties are found entitled to or that it shall be limited to passing a decree for recovery of an amount which is not in excess of Rs. 5,000. \* \* There are however, authorities for holding that in the absence of the consent of the plaintiff, it is not open to the judge to strike out a part of the claim of the plaintiff in excess of the pecuniary limits of the court and that no presumption can, therefore, arise that the plaintiff has impliedly relinquished such excess by merely instituting his suit in a court of limited jurisdiction. The argument that unless it is presumed that the plaintiff had relinquished a part of his claim, or unless it is held that the inferior court cannot pass a decree for an amount in excess of its pecuniary limits, it would enable the plaintiff to commit a fraud on the court and leave it open to the plaintiff to have a case tried by an inferior court by valuing his claim at an insignificant amount may be successfully put in different ways. In the first place, it is always open to the defendant to challenge the valuation at the proper time and for the court to afford him adequate relief if the court finds that the plaintiff has intentionally undervalued the claim. It would also appear that in certain cases even where the plaintiff has properly valued his relief, the court is called upon to adjudicate upon the claims of the defendants *inter se* or the claim of the defendants against the plaintiff in respect of the amounts far in

excess of its pecuniary limits. A suit by A against B and C for settlement of partnership accounts may result in a decree being passed in favour of A against B for Rs. 5,000 or less and in favour of C against B for a sum in excess of Rs. 5,000 or may result in decrees being passed against A in favour of B and (or) C in excess of Rs. 5,000. Could it then be said that the court should stay its hands and not do equities between the parties or refer B or C to a separate suit? In suits for partition of property, notwithstanding certain dissentient rulings of the Calcutta High Court, it has been held that the value of the share claimed by the plaintiff determines the jurisdiction of the court. The share of the plaintiff is often insufficient in comparison to the shares of the defendants *inter se*, and it is open to any of the defendants to claim a partition of his share in the same suit. To refer him to a separate suit can only lead to multiplicity of proceedings not warranted by the law.

Not only the legislature has not purported to put a limit on the nature of the decree which may be passed by a court when it has rightly assumed jurisdiction over the *lis*, but it would appear that the Legislature had in view cases where in consequence of an under-valuation or an over valuation the case may be tried by a court of inferior or superior grade. Under s. 11 of the Suits Valuation Act such under or over valuation under certain circumstances is treated not as an illegality depriving the court of its jurisdiction, but as an irregularity which may be cured.

The Calcutta decision though approved of to a certain extent by the Rangoon and Patna High Courts does not appear to have been followed in its entirety. In *Hardayal v. Ramdoe*, 2 R. 408 at p. 411 = 86 I. C. 568 = 1924 Rang. 354, Robinson C. J. and Brown J. were of opinion that though the Subdivisional Court could not pass a decree for an amount in excess of Rs. 5,000 the plaint could be returned for presentation to the proper court. The theory of the intentional relinquishment of the excess claimed does not appear to have been referred to. In *Satya Kinkar Sahana v. Shiva Prasad Singh*, 52 I. C. 452 = 1920 Pat. 17 Jwala Prasad J. distinguished the case of *Gulab Sundari Debi v. Indra Kumar Hazra*, 1 I. C. 86 by holding that though a Munsiff cannot pass a decree in excess of his pecuniary jurisdiction, where he either dismisses the suit or awards a sum below its pecuniary limits, it is open to the appellate court to allow in appeal a sum far in excess of such pecuniary limits. It is, however, difficult to follow this nice distinction, or to hold that the appellate court may not likewise pass a decree for an amount in excess of the pecuniary jurisdiction of the trial court where the trial court has passed a decree for an amount in excess of its limits. One of the logical conclusions resulting from the view taken by the Calcutta High Court is that in a suit for recovery *inter alia*, of mesne profits in pending suit, the court may not pass a decree for such mesne profits in excess of its limits, *c.f.* *Bupendra Kumar Chakarvarthi v. Purnachandra Bose*, 43 C. 650. This case, however, has been distinguished in *Dinanath*

*Sahai v. Mayavathi Kuer*, 1921 Pat. 69=60 I. C. 346, on the ground that O. XX, r. 12, of the Civil Procedure Code expressly authorises the trying court to determine such mesne profits and thereby confers jurisdiction on the court to pass a decree in excess of its limits. We are indebted to the eminent judge Mukerji, J., for a collection of the different definitions of "jurisdiction" referred to by him in *Haridynath Roy v. Ramchandra Barua Sarma*, 48 C. 138=59 I. C. 806, but none of those definitions goes so far as to provide what decree a court may or may not pass when it is once seized of the matters in dispute between the parties. Assuming that it is doubtful if the legislature did intend to confer jurisdiction on the court to pass a decree in excess of its pecuniary limits, the old maxim *Boni judicis est ampliare jurisdictionem*, should apply and the court should exercise such jurisdiction and pass such decree as the circumstances require so as to prevent a failure of justice which may otherwise result."

**Lahore.**—The view of the High Court of Lahore is set out in *Fazal Karim v. Municipal Committee, Jullander*, 1929 Lah. 107.

"Where a particular court has jurisdiction to try a suit at the initial stage and passes a preliminary decree for accounts, but its jurisdiction is ousted to deal with further proceedings later on when the amount found due is more than the court has jurisdiction to pass a decree for, a preliminary decree passed by the lower court is not without the jurisdiction of that court and is not void: \* \* When a court having jurisdiction to try a suit passes a preliminary decree for rendition of accounts, but its jurisdiction is ousted to deal with further proceedings, i.e., to pass a final decree for the amount found due, it being more than the court has jurisdiction to pass a decree for, the proper order for the appellate court is to *transfer* the case to the court having jurisdiction to try the suit and not to return the plaint for presentation to proper court. The order returning the plaint is revisable. \* \* When after passing of a preliminary decree for accounts, the case is transferred to another court to deal with further proceedings of the case, the former court having no jurisdiction to pass a decree for the amount found due, it is no doubt open to the latter court to consider the question of a *de novo* trial but that is merely a matter of discretion and the preliminary decree that has been passed must be taken into consideration as it cannot be set aside except in due course of law. The latter court to which the case has been transferred cannot ignore the preliminary decree and try the case from commencement. It can exercise its discretion to hold a *de novo* trial only from the stage after passing of the preliminary decree, but cannot go behind it.

**Rangoon.**—Where the amount for which the plaintiff is found entitled goes beyond the pecuniary jurisdiction of the court, then the proper view will be to return the plaint for presentation to the proper court. It was held in *Hardyal v. Ram Deo*, 2 R. 408, that where in a suit for accounts, the court entertaining it on the preliminary valua-

tion finds that the final valuation would be outside its jurisdiction, the proper procedure would be to return the plaint for presentation to the proper court.

**The views considered.**—It is obvious that the views set out by Lahore and Rangoon High Courts are not so easily workable in practice. The Lahore view is that the suit should be transferred. But at what stage is the question? If a court of inferior jurisdiction holds the trial, completes it and comes to the conclusion that a decree beyond the limits of its pecuniary jurisdiction has to be passed then it is submitted that it has effectively exercised a jurisdiction which the Lahore, and Rangoon High Courts are not willing to let it exercise. If in substance and for all practical purposes that court exercises such a jurisdiction, then it is doubtful whether any useful purpose is served by the suit being transferred to or the plaint returned for presentation to a superior court. If the transferee court is bound to accept the findings of the court transferring the suit, then the latter court could as well have passed the decree flowing from its own findings. If the transferee court is entitled to hold a *de novo* enquiry then so much time has been wasted by the first court and further there is no guarantee that the transferee court may not in its turn hold that it has no jurisdiction but that it is the original court itself which transferred the suit that should try the suit. There is much to be said for and against the only two views on the point namely that of Madras and Calcutta, and for the reasons exhaustively set out in the decision 1925 Sind 324, the view of the High Court of Madras is the only logical solution of this really perplexing problem.

**Appeals—Forum.**—There is a difference of opinion between the several High Courts as to the proper forum of appeal in cases where the amount decreed by the court of first instance differs from the suit claim and where the appeals would lie to different courts if the amount claimed or the amount decreed is taken to be deciding factor. Again there is a difference of opinion between the cases where there are definite claims and cases when there is only approximate or tentative claim. "A plaintiff may in his plaint fix a sum definitely as the amount of his claim or he may fix it approximately or tentatively as in a suit for accounts or for mesne profits (O. VII, r. 2, C. P. C.) Where the plaintiff fixes a sum definitely it is that amount that determines the forum of appeal and not the amount affected by the decree and involved in the appeal. *Baidyanath v. Makhan*, 17 C. 680. Where the plaintiff fixes a sum approximately there is a difference of opinion as to the forum of appeal." Obviously this difficulty could arise only in courts where the prevalent view is that the court in which a suit is properly instituted continues to have the jurisdiction to pass any decree even though the amount may happen to be beyond the limits of its pecuniary jurisdiction. As has been already observed, the High Courts of Allahabad, Bombay, Madras and Sind hold that view. The procedure laid down in Lahore is for the court to transfer such cases to a court of competent jurisdiction and in

Rangoon to return the plaint for presentation to the proper court. The matter is thereby simplified and the suit consequently becomes instituted in a court of competent jurisdiction. The Calcutta High Court has met the difficulty by staying the hands of the trial court by directing it to pass a decree only up to the limits of its pecuniary jurisdiction. Here also any doubt as to what the proper forum of appeal is cannot arise, except in cases where the suit is tried by a court of unlimited pecuniary jurisdiction as for instance a Subordinate Judge's Court in Madras. In that case the question might arise when the appellate forum differed as regards the amount of the claim or decree, as to which is the proper forum.

**Calcutta.**—The view of the Calcutta High Court is that it is the amount decreed by the first Court as the amount due to the plaintiff that determines the forum of appeal. *Ghulab Khan v. Abdul Wahab*, 31 C. 365; *Ijijatulla v. Chandra Mohan*, 34 C. 954 F. B. Where the value of the mesne profits decreed taken along with the value of the land exceeds Rs. 5,000, though the suit was valued at less than Rs. 5,000, by the plaintiff, an appeal from a decree therein lies to the High Court. *Jogendra Nath v. Ramgopal*, 1927 Cal. 616.

**Bombay.**—The view is the same as in Calcutta. See *Ibrahimji v. Bejanji*, 20 B. 265.

**Allahabad.**—The Allahabad High Court agrees with that of the Calcutta and Bombay views. (See *Goswami v. Bohra Desraj*, 32 A. 222) but adds a reservation to it, to the effect that it is the amount determined by the first court as the amount due to the plaintiff and *accepted by the plaintiff* by payment of additional court-fee that determines the forum of appeal. This observation that the amount accepted by the plaintiff is to determine the forum of appeal is, it is submitted, with due deference, not quite clear. It is difficult to understand as to what is really meant by that expression. It was also felt by their Lordships of the High Court of Madras in 40 M. 1 where their Lordships comment on that expression as follows: "The difficulty of accepting this position as correct is equally great. What happens if the plaintiff does not accept the amount ascertained to be due? How is he to signify his acceptance? Till his acceptance, what is to be the position of the defendant if he wants to appeal? As far as we have been able to examine the cases, no satisfactory answer is obtainable to any of these questions. Let us take a concrete case. Suppose a suit for accounts is instituted in a Subordinate Court with unlimited pecuniary jurisdiction and the plaintiff values his claim at Rs. 3,000. The court gives him Rs. 4,000. Neither the plaintiff nor the defendant is satisfied; the plaintiff wants Rs. 6,000 and the defendant says that nothing is due. To what court should the defendant appeal and to what court the plaintiff? Suppose the defendant wants to appeal; how is he to ascertain if the plaintiff accepts the valuation or not? Suppose the defendant appeals first, his appeal must

obviously be to the District Judge. After that plaintiff appeals claiming Rs. 3,000 more; should his appeal be to the High Court? If it is to the High Court does the District Court lose jurisdiction over the defendant's appeal? and if before the plaintiff appeals, the District Court decides the appeal of the defendant in his favour, is that adjudication void as being without jurisdiction? Suppose the plaintiff after appealing to the High Court and after defendant's appeal is taken up to the High Court withdraws his appeal? Has the defendant's appeal to be sent back? Can the plaintiff file a memorandum of objection in the defendant's appeal in the District Court claiming the extra three thousand rupees? Is it the principle that till there is an ascertainment of the amount due by the first court accepted by the plaintiff his original valuation is the test as was apparently held in *Nilmony Singh v. Jagabandhu Roy*, 23 Cal. 536? If it is, the difficulty does not cease, for if the court dismisses the plaintiff's suit after taking accounts, the plaintiff, if he appeals to the District Court cannot on the principle laid down in *Bupendra Nath Kumar Chakravathy v. Purna Chandra Bose*, 43 Cal. 650 get more than Rs. 5,000, the limit of that court's appellate jurisdiction. The result of accepting any of these positions would be that the value of the subject-matter of the suit is a shifting quantity and varies from the trial court to the Court of Appeal and varies even for purposes of appeal according as the appellant is the plaintiff or the defendant. If again this interpretation is correct, the forum of appeal may change in appeals from decrees or orders of the same court in the same suit; for example in a suit for accounts, the appeal from the preliminary decree dismissing the suit or ordering accounts may lie to one court, while an appeal from the final decree may lie to a different court—that is just what happened in *Gulab Khan v. Abdul Wahab Khan*, 31 Cal. 365—a result certainly not contemplated by s. 13 of the Civil Courts Act." For the above said reasons it appears that the Allahabad view might well be re-considered.

**Lahore.**—As has already been observed, the view accepted by Lahore High Court being that the suit should be transferred to a court of competent jurisdiction there will be no question of a decree being passed by a court of inferior jurisdiction for an amount which is beyond the limit of its pecuniary jurisdiction. It is only in the case of appeals from a court of unlimited pecuniary jurisdiction, where the same would lie to one of two appellate tribunals according to the subject-matter, that the question would arise for consideration as to what is to be the determining factor, the amount sued for or the amount decreed. It was held in *Fazal Karim v. Municipal Committee Jullundhar*, 1929 Lah. 107 as follows: "There can be no manner of doubt the Subordinate Judge, had jurisdiction to pass the preliminary decree and it is only the facts which transpired after the decree had been passed which ousted his jurisdiction to deal with the further proceedings in the case. *Budha Mal v. Rallia Ram*, 9 Lah. 23 = 1928 Lah. 157;

*Jaswant Ram v. Moti Ram*, 7 Lah. 570 = 1926 Lah. 376 and *Lal Chand Mangal Sain v. Behari Lal Mehar Chand*, 5 Lah. 288 = 1924 Lah. 425, merely lay down that in suits for possession of land the amount fixed by the trial court as payable by the plaintiff to the defendants as a condition precedent to his getting possession is the amount that determines the forum of appeal. In other words, it is the value of the subject-matter of the suit as finally determined by the decree of the court on which the determination of the Court of Appeal depends."

**Madras.**—The view taken by the High Court of Madras is the same in the case of appeals as in the case of suits. That is set out in *Kannaya v. Venkata*, 40 M. 1, where their Lordships observed as follows:—The remaining point is as to the forum of appeal. We think that the same simple rule should be applied, *viz.*, that the amount or value of the subject-matter as fixed in the plaint should determine the court to which the appeal lies. It is to be observed that the words "amount or value of the subject-matter of the suit" occur both in ss. 12 and 13 of the Civil Courts Act and the words should be given the same meaning in both the sections in the absence of any indication either from the context or otherwise that they were used in different senses; in this case, apart from the general rule of construction, it will be clear that the words are used in the same sense when it is remembered that the value determined both the trial court and the court of appeal, the intention of the legislature obviously being that the value when once ascertained and settled should remain the same for both purposes. The rule is not only simple and capable of easy application to all cases but is also right on principle. As pointed out by that eminent Judge Sir Bashyam Ayyangar in *Krishnamachariar v. Mangammal* the theory of an appeal is that the suit is continued in the Court of Appeal and reheard there. In the Court-Fees Act a special provision is made for the levying of additional fees on the plaint when the suit comes before the Court of Appeal—observe the language—if that court finds that the suit has been undervalued. If the *value of the suit* does not change while it is in the first court, there is no reason to hold that the value changes when the same suit is taken to the Court of Appeal. According to the High Court of Madras, it is the amount or the value of the subject-matter as fixed in the plaint, though approximately, that determines the court to which the appeal lies, and not the amount decreed. *Kannayya v. Venkata*, 40 M. 1 = 39 I. C. 439 F. B.

**Patna.**—Where a suit is dismissed by the first court—and in that case the mesne profits remain undetermined—the sum stated in the appeal determines the forum of appeal. *Staya Kinker v. Raja Prasad Singh*, 52 I. C. 452 = 4 P. L. J. 447.



Decision of questions  
as to valuation.

12. (i) Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal shall be decided by the court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit.

(ii) But whenever any such suit comes before a court of appeal, reference or revision, if such court considers that the said question has been wrongly decided to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of section 10, paragraph ii, shall apply.

**Bengal amendment.**—In paragraph ii of section 12 of the said Act, for the words and figures “and the provisions of section 10, paragraph ii, shall apply” the following has been substituted, namely :—

“and thereafter :—

(a) *if the party required to pay is the appellant or petitioner, the provisions of sub-sections (2) and (3) of section 8B shall, so far as may be, apply.*

(b) *if the party required to pay is the respondent or the opposite party, the provisions of sub-section (2) of section 8B shall, so far as may be, apply, and, if such party fails to pay the fee required before the date fixed by the Court, the Court shall recover the amount of such fee from him as a public demand :*

**Explanation.**—*For the purposes of this section a question relating to the classification of any suit for the*

*purpose of section 7 shall not be deemed to be a question relating to valuation."*

### COMMENTARY.

**Object of the section.**—The section has been framed only in the interests of revenue (*Vide* cl. 2). *Tekana v. Alagiri*, 25 I. C. 506. It has been framed for fiscal purposes as is evident from the second clause which shows how a Court of Appeal may review the decision of the 1st court where there has been a loss of public revenue. *Peary Shah v. Suraj Mal*, 16 I.C. 575. "Clause 2 is enacted for the purpose of protecting the revenue." *Ladli Begum v. Ram Das*, 1925 Pat. 488 = 90 I.C. 321; *Gajendra Nath Saha Chowdhury v. Sulochana Chaudhurani*, 39 C. W. N. 131.

"The scheme of the section is to see that the revenue is not defrauded and that the proper fee payable to Government as the "price" of the trial of the suit has been paid" *Per* Wallace, J., in *In re Lakshmi Ammal*, 49 M. L. J. 608.

**Scope of the section.**—Under this section, the trial court alone has power to decide what is the proper valuation for purposes of court-fee: and the appellate court has a like power with regard to the memorandum of appeal even where the valuation by the trial court is different, and subject to the provision of cl. 2, the decision of such court is final. *Krishna Mohan v. Raghunandan*, 4 Pat. 336 = 87 I.C. 137 = 1925 Pat. 392.

The section has no application to the question of court-fees payable on a memorandum of appeal presented to the High Court, but only to the fees payable in courts other than those mentioned in Chapter II of the Act. (*Vide*, the heading of Chapter III in which the section occurs). *Krishna Mohan v. Raghunandan*, 4 Pat. 336 (F.B.)

**Finality of decision re court-fees. Sections 5 and 12 of the Act.**—The term "final" means that it is final between the parties to the suit and the finding could not be assailed in appeal or revision at the instance of the aggrieved party. In s. 5 of the Act, also, the word appears; and there it is provided that the decision of the taxing officer or the taxing judge is final. And that section applies to the High Court. But there is a difference between the finality as contemplated in s. 5 and this section. The former section applies to cases where any difference arises between the officer whose duty it is to see that the proper fee is paid and any suitor or attorney, while in this section the decision is final, as between the parties to the suit.

Besides, the language of s. 12 is different from that of s. 5. Two questions arise with respect to a document filed, exhibited or recorded in or received, or furnished by a High Court, namely, (1) the necessity of paying a fee and (2) the amount of fee payable. Under s. 12 it is merely the decisions of the subordinate courts as to valuation and not as to the category, in which the suit or appeal falls which is final.

whereas under s. 5 the decision of the Taxing Officer is final as to the amount of fee determined by him to be payable upon the memorandum of appeal or other documents filed in the High Court, no matter how he arrives at his conclusion, namely, by determining the valuation of the category. See *Krishna Mohan v. Raghunandan*, 4 Pat. 336.

"The difference provided for in s. 5 is as to the necessity of paying a fee or the amount thereof. In both those cases, the decision of the taxing officer or Judge is declared to be final. But in s. 12 the finality is only with reference to the determination of the amount of any fee chargeable under chapter III of the Act, on a plaint or memorandum of Appeal." It has therefore been held that this section has no application where the question for decision is as to the class under which a suit falls and not merely the valuation under that class. *Sundar Mal Marwari v. Jessie Caroline Murray*, 16 I. C. 963; *Dmaras Mirza v. Jones*, 10 C. 599.

**Applicability of the section to the High Court.**—The reading of the Chapter in which this section occurs, the wording of the section and how far the section applies to the High Court in its original and appellate jurisdiction are fully discussed in the following decision of the Patna High Court in *Krishna Mohan v. Raghunandan*, Pat. 366. Their Lordships observe therein as follows :—

"It seems clear that s. 12 has no application to a question of court-fees payable on a memorandum of appeal presented to a High Court, but only applies to fees payable in other courts. It is true that the High Court would have the power conferred by clause 2 but the fees dealt with in Chapter III, which includes s. 12 are stated to be the "Fees in other Courts and public offices," that is, in courts other than those referred to in Chapter II, and questions relating to fees payable in the High Court are not governed by any of the provisions in Chapter III unless it should appear from the context that they are necessarily included. It was suggested that Chapter III which includes ss. 6 to 19 does, in fact, in some cases, deal with fees payable in the High Court and s. 8 was referred to as an instance. This section deals with the fee payable on a memorandum of appeal against an order relating to compensation under the Land Acquisition Act for the time being in force, and under the Land Acquisition Act of 1894 such appeals lie only to the High Court. The section, however, is not inconsistent with the heading of Chapter III for in 1870, when the Court-Fees Act was passed, by the Land Acquisition Act then in force such appeals lay to District Judges, and no inference can be drawn from this section that Chapter III was intended to deal with the fees payable in the High Courts. Section 15 was also referred to, which provides for repayment in certain cases of so much of the fee paid on an application for review as exceeds the fees payable on any other application to the court under the second schedule, Article 1 clause (b) or clause (d), where the court reverses or modifies on review its former decision. Clause (d) Article 1 of the

second schedule, is an application presented to a High Court. The fee therefore repayable may be part of the fee paid upon an application for review in the High Court as the section now stands. But this also, it must be remembered, is a piece of patch work legislation. In the Act as originally passed, the words "plaint or memorandum of appeal" appeared instead of the word "application" and although the word "application" was substituted in place of the words "plaint or memorandum of appeal" by a later Act of the same year, it would appear that the fee actually recoverable under the Act as originally passed was part of that paid on the plaint or a memorandum of appeal. This was an obvious blunder and had to be rectified by an amending Act. As already stated in another connection, the drafting of this Act is somewhat unscientific and its interpretation certainly gives rise to considerable difficulty but even if there should be found in Chapter III an isolated instance of reference to fees payable in a High Court, the intention of the Act was to deal in that Chapter with fees payable in the subordinate courts only unless the contrary must necessarily be inferred from the context.

It would be an anomalous state of affairs if the High Court alone had no power to decide the question of valuation for the purposes of determining the amount of the fee chargeable on the memorandum of appeal presented before it, a power which the Lower Appellate Court possesses in determining the amount payable on its own memorandum of appeal. The scheme of the Act appears to be that, in the subordinate court under s. 12, the trial court alone has power to decide what is the proper valuation for the purpose of determining the fee payable on the plaint, and the appellate court alone has the like power with regard to the memorandum of appeal presented in that court, even if the trial court has arrived at a different valuation, and each court's decision is final subject to the provisions of the second clause of s. 12."

**Section defective.**—Not only is the section defective for the reasons already set out *supra* but it is also defective as there is a want of mutuality in the matter of rectification of mistakes in the matter of collection of court-fee.

"The power is given only to demand an additional fee in the interest of the revenue and does not in any way give relief to a suitor from whom the subordinate courts on account of any wrong decision as to valuation have levied a higher fee than was payable upon the plaint or memorandum of appeal in those courts, except in certain contingencies, arising under s. 13 of the Act. It would appear that the Act does not purport to give relief to a suitor from whom an improperly excessive fee has been taken in the subordinate Courts or in the High Court. Mahmud, J., while concurring with the decision of Edge, C. J., in *Balkaran Rau v. Govind Nath Tarwari*, says, "The enactment, as the learned Chief Justice has explained, is most ~~unjust~~ to collect money from those who seek to obtain justice, but

there is not one word in that statute to enable the litigant who is to be subject to these stringent rules to re-obtain the sum of money, which he, by dint of wrongful user of the powers given to the Taxing Officer, does pay as court-fee." *Krishna Mohan v. Raghunandan*, 4 Pat. 336.

The section is also defective in that it discloses no method of collecting deficit court-fee and the courts have always taken it upon themselves to realise it by such lawful means as might be open to them. *Bajinath v. Dhami Row*, 1929 All. 571. This is redressed in Bengal where court-fee payable by the respondent in the Appeal can be recovered as a public demand.

### Cases to which the section applies.

(1) The finality of the decision of the court is only about the valuation of the suit and not about the category or class under which the suit falls for the computation of fees under the Act.

If there is no doubt as to the class in which the suit falls, and the section of the Court-Fees Act which is applicable, the decision of the trial court as to valuation is final. But, if there is a dispute as to the class in which the suit falls, *i. e.*, as to the section or article of the Act applicable, then there is no finality, and an appeal would lie. This view is given legislative sanction in Bengal by the "*explanation*" to this section, which says that for the purposes of this section a question relating to the classification of any suit for the purposes of section 7 shall not be deemed to be a question relating to valuation.

There is a complete unanimity between the several High Courts on this question as will be noticed from the decisions cited below.

**Allahabad.**—*Balkaran Rai v. Govind Nath Tewary*, 12 A. 129; *Wilayat Ali v. Umardaraz Ali*, 19 A. 165.

**Bombay.**—*Vithal Krishna v. Balakrishnan*, 10 B. 610 F. B.; *Dada Khan Kittur v. Nagesh*, 23 B. 486; *Balakrishna Bhimaji v. Ramkrishna*, 33 Bom. L. R. 263=1931 Bom. 234.

**Calcutta.**—In *Sundar Lal Marwari v. Jessie Caroline Murray*, 16 C. L. J. 375, it is held that Section 12 has no application where the question for decision is as to the class under which a suit falls and not merely of valuation in that class. In *Tara Prasanna Chougdar v. Nrisingha Moorari Pal*, 51 C. 217, it was observed that where the decision involves root questions of principle as to the nature of a suit, it is open to appeal notwithstanding the provisions of s. 12 of the Court-fees Act. See also *Omrao Murza v. Jones*, 10 C. 599; *Studd v. Mati*, 28 C. 334; *Pearry Shah v. Surajmal*, 16 I. C. 575.

**Lahore.**—See *Mt. Jantan and others v. Ahmad and another*, 1928 Lah. 221. Their Lordships observed as follows:—"The section merely bars an appeal where the dispute is about the proper valuation of the subject-matter of the suit, and not where the question is which of the several Articles of the Court-Fees Act

applies to the facts stated in the plaint. In the first case it is more or less a question of fact that has to be determined by the court, and the Legislature has laid it down that the decision of the court in such matters shall be final. In the second case, different considerations arise, and the matter being purely one of law is capable of being examined by superior courts at the instance of either party. There is another aspect of this question. The order directing the payment of the additional court-fee was incorporated in the decree. It was therefore an essential part of the decree, and admittedly the decree was appealable to the District Judge. In other words, the decree being conditional on the performance of certain acts by the plaintiffs on the non-performance whereof it was to become void, and the direction relating to the performance of such acts being illegal, as held by the District Judge, the learned judge has jurisdiction to adjudicate upon the legality or otherwise of the condition imposed." See also *Mt. Parmeshri v. Panna Lal*, 1931 Lah. 378.

**Madras**—A decision as to the category to which a suit belongs is not final under s. 12 of the Act. The question is concluded by the authority of *Lashmi Anna v. Janamejayan Nambiar*, 4 M. L. J. 183. Per Venkatasubba Rao, J., in 48 M. L. J. 688. See also *Annamalai Chetti v. Lt. Col. Cloete*, 4 M. 204; *Champadan v. Kummi-mal*, 4 M. L. J. 173.

**Nagpur**.—See *Govind v. Vithabai*, 1925 Nag. 435 = 87 I. C. 911. "Section 12 applies only to a decision as to valuation of a suit, which falls within a particular class, and not to a decision as to the particular class in which the suit falls, that is to say, if there is no doubt as to the class in which the suit falls, and the section of the Court-Fees Act which applies to it, the decision of the first court as to the valuation which depends on the value of the property in suit is final: but if there is a dispute as to the class in which the suit falls, that is to say, the section of the Court-Fees Act which applies to it, an appeal will lie." The decision in 23 Bom. 486 set out above was followed.

**Oudh**.—See *Gumani v. Banwari*, 54 I. C. 733.

**Patna**.—"It has been held that a question of valuation does not include a question of category and although the two questions may in practice often overlap and a decision of a question of valuation for the purpose of determining the amount of fee chargeable may involve a decision on the question of category, a decision on a question of category is not final within the meaning of clause (1) of s. 12, while a decision on a question of valuation pure and simple as defined above is final as between the parties to the suit. The second clause of s. 12, however, gives a court of appeal power to collect deficit court-fees in respect of fees payable in subordinate courts and it seems now settled that the High Court as a court of appeal, reference and revision is competent to exercise this power in respect

of all courts subordinate to it." *Krishna Mohan v. Raghunandan*, 4 Pat. 336. See also *Chandra Moni Kuar v. Basudev Narain*, 4 Pat. L. J. 57=49 I. C. 442; *Mani Lal v. Durga Prasad*, 1924 Pat. 673; 80 I. C. 667=3 Pat. 930.

**Punjab.**—See *Mahna Singh v. Bahadur Singh*, 50 I. C. 125; *Musst. Sada Kuar v. Buta Singh*, 26 I. C. 565; *Ujagar Singh v. Sohan Singh*, 105 I. C. 610.

(2) The decision will be final only in case the parties who are concluded by same had an opportunity to be heard on the question of court-fees. *Amjad Ali v. Muhammad Ismail*, 20 All. 11; *Krishna Mohan v. Raghunandan*, 4 Pat. 336.

(3) The finality is only as between parties. The appellate court is not bound by the decision of the lower court as to the fees payable. *Kashinath v. Govinda*, 15 B. 82.

### Cases to which the section does not apply.

(1) Section 12 of the Court-Fees Act has no application to the case where the court decides the valuation of the suit for purposes of determining whether the suit is within the pecuniary limits of the jurisdiction. *Chilukuri Narasimacharyulu v. Zamindar of Bobbili*, 10 L. W. 178=52 I. C. 1001. This decision approved of and followed the decision in *Peary Shah v. Surajmal*, 17 C. W. N. 503=16 I. C. 575; *Annamalai Chetty v. Clote*, 4 M. 204 and *Kanaran v. Komappa*, 14 M. 169. That it has no application to a question of jurisdiction is clear from the opening clause of the section which runs as follows:—Every question relating to valuation for the purpose of determining the fee, etc. Thus, where the question of valuation related essentially to the jurisdiction of the court to entertain the suit; this section did not apply and the decision was not final, and could be appealed against. Section 12 has no application where the valuation is made by the court for the purpose of determining the question whether the suit is within the pecuniary limits of the court's jurisdiction, and where, on the basis of such valuation, the plaint was returned for presentation to the proper court, an appeal lies against the order made under O. 43, r. 1 cl. (a).

(2) Where the decision as to court-fees was arrived at only incidentally to the decision as to valuation for jurisdiction, the section is inapplicable. *Sikendar Shah v. Gulam Nabi Shah*, 47 I. C. 7.

**Finality of the decision by the court.**—The question as to how far the decision of the court is final, as regards the valuation of the suit, for court-fees, can well be considered under the two heads as to when an appeal lies from an order rejecting the plaint for non-compliance with the order of payment of fees and as to when a revision lies against such an order.

**When does an appeal lie?** It is provided in this section clause 1, that the decision on the question relating to the valuation

for the purpose of determining the amount of fee payable is *final*, between the parties. The history of the case-law traced below on this vexed question would clearly show the imposition of judicial interpretation on the statute, the provisions of which being thereby whittled down. (1) In the first place the decision on the question of valuation has been confined to questions of valuation pure and simple and held inapplicable to cases of determination of the question as to whether the court-fee is chargeable under one Article or Section of the Court-Fees Act or the other. Though the section uses the word "Valuation" alone, it has been judicially interpreted to be valuation as to amount and not as to category. Consequently one class of cases have been taken out of the purview of the section by the effect of judicial interpretations. (2) Again if the determination is not for the computation of the court-fees or rather is not merely for the computation of the fee but also for the determination of jurisdiction for instance, then the decision is not final. That is restriction number two grafted into this section. (3) Even in cases where the decision of the lower court steers clear of the above two reservations then too, the High Courts have been treating the decision as to court-fees as not final, inasmuch as they entertain not only Civil Revision Petitions to revise the order relating to court-fees but also appeals wherein the decision of the lower court as regards fees is questioned. This really knocks the bottom out of this provision in s. 12 (1), that such decisions are final as between party and party. Where the question of court-fee raised in the lower court relates to valuation and is decided, the decision may be in favour of plaintiff or against him. If it is in favour of plaintiff the prevailing view seems to be that it is not revisable as an appeal is stated to be available to the aggrieved party if the question involves one of jurisdiction, and if it is not, there is no aggrieved party. If it is against him it may be a mere order for payment of additional court-fee or it may go further and oust the jurisdiction of the court, in which case there will be the order returning the plaint for presentation to the proper court. If the order is one of payment pure and simple of additional court-fee then the order is revisable for it is held that if the order is wrong the relief should be granted to the aggrieved party forthwith. But there is also the dissentient view by some of the Judges of the High Court of Madras who held that an order directing payment of additional court-fee could not be revised as the lower court was only exercising its jurisdiction, when it passed that order and that any future order of the court, *viz.*, rejection of the plaint which might result by the non-compliance by the plaintiff with the lower court's order could not be anticipated, as a failure to exercise jurisdiction vested in it by law. Anyhow the practice seems to be to revise such adverse orders against the plaintiff. Again the plaintiff might sit tight and refuse to comply with the order directing payment of additional fees. Then the plaint will be *rejected*, to use the words of the C. P. C., O. 7, r. 11, though the expression used



in s. 10 (ii) of the Court-Fees Act is that the suit shall be *dismissed*. It is provided in s. 2, C. P. C. in the definition of a decree that it includes an order rejecting a plaint. Consequently an order rejecting a plaint is appealable. In other words where the rejection is due to the fact of non-compliance with the order of the lower court directing payment of additional court-fee consequent on its decision as to valuation the finality of that decision vanishes. Thus by judicial interpretation, the provisions as to finality of certain decisions enacted by s. 12 (1) is in practice abrogated.

### Views of the several High Courts.

**Calcutta.**—In *H. C. Studd v. Mati Matho*, 28 C. 334, the court approved of the earlier decisions of the Calcutta High Court in favour of a right of appeal and held that s. 12 was no bar to the appeal as the question to be decided was the class of suit in order to ascertain in what schedule of the Act it must be taken to fall for the purpose of fixing the court-fee.

In *Prokash Chandra Sarkar v. Bishambar Nath Sahay*, 14 C. W. N. 343, the Calcutta High Court carried the same principle to its extreme limit. The plaintiff valued the relief at Rs. 2,100, the defendant valued it at Rs. 50,100. The Subordinate Judge decided that the market-value of the subject-matter of the suit was at least Rs. 24,000, demanded institution fees on that value, and on, non-compliance dismissed the suit. The court of first appeal held that the valuation arrived at was excessive, fixed the valuation at Rs. 10,120 and directed that the institution fees on that value should be accepted. On appeal by the defendant, the High Court held that s. 12 of the Court-Fees Act was passed mainly for fiscal purposes and prevented the parties from contesting the decision of the first court, so far as that decision was arrived at for those purposes only but that when the result of the decision on valuation was to deprive the plaintiff of the right which he sought to enforce, thereby affecting the merits of the plaintiff's suit, the decision was appealable.

In *Peary Sha v. Surajmal Marwari*, 16 C.L.J. 371 = 16 I.C. 575, the basis of the decision was that the question in that case was not a question relating to valuation for determining the fees chargeable but relating essentially to the jurisdiction of the Subordinate Judge to entertain the suit. In this case, it may be observed that the jurisdiction of the Subordinate Judge depended on the valuation placed by him on the right of easement, yet the High Court held that the order was not final within the meaning of s. 12.

*Sundarmal Marwari v. J. C. Murray*, 16 C. L. J. 375, is direct authority for the proposition that where the question is one as to class and not merely of valuation, not only does the right of appeal lie, but the High Court is competent to exercise its revisional jurisdiction under s. 115 of the Civil Procedure Code, and also to revise the proceedings of the lower Court under s. 15 of the Charter Act.

**Madras.**—"The terms of the 12th section of the Court-Fees Act ought not to receive a larger interpretation than they fairly admit of. They do not declare the decision of the court in which the plaint or appeal is filed, final on all questions which may arise respecting the court-fee, but on every question relating to *valuation* for the purpose of determining the amount of the fee. This may be a mere arithmetical calculation; it may involve the decision of a simple question of fact. On the other hand, apart from the valuation necessary to determine the amount of the fee, questions of much nicety may arise respecting the fee properly leviable on the suit; it is conceivable that the Legislature designedly prohibited appeal in the one case and permitted it in the other." *Annamalai Chetti v. Glocka*, 4 M. 204. In *Tikana Kavandan v. Alagiri Kavandan*, 25 I. C. 506, it was held that a decision on the question of court-fees by the court of first instance is final between the parties though it can be reopened by the Appellate Court in the interests of revenue.

**Punjab.**—The Punjab Chief Court in *Sad Kaur v. Buta Singh*, 25 I. C. 565, declined to interfere in revision with an order rejecting a plaint on the ground that an appeal from the order was competent.

**Oudh.**—In *Gumari v. Banwari*, 54 I. C. 733, the question was whether an appeal lies against the order of the lower court dismissing an appeal for failure of the appellant to pay the court-fee due on the memorandum of appeal. It was observed :

"Nearly all the High Courts have, however, drawn a distinction between a case where the valuation depends merely on a question of fact and one where it depends on a question of law declaring that s. 12 does not bar an appeal in the latter case. See *Studd v. Mati Mahto*, 28 C. 334; *Balkaran Rai v. Gobind Nath Tiwari*, 12 A. 129; and *Dada v. Nagesh*, 23 B. 486. Although it appears that the words in the section "Every question relating to valuation for the purpose of determining the amount of any fee" are so wide as to include question both of law and fact, it does not appear desirable to depart from a view so established and general."

**Patna.**—It was held in *Chandramoni Koer v. Basdeo Narain Singh*, 4 Pat. L. J. 57, that "under s. 540 of the Code of 1882, even as under s. 96, clause 1 of the Code of 1908, orders rejecting a plaint were and are appealable as decrees *save where otherwise expressly provided in the Civil Procedure Codes themselves, or by any other law for the time being in force*. There was under the old Code, and there is under the new Code no such express saving provision and the question therefore resolves itself under either Code, into a question as to whether appeals from such orders are barred by s. 12, clause 1 of the Court-Fees Act. It may be taken as having been conceded that *the right of appeal from an order rejecting a plaint under O. VII, r. 11 clause (b) or (c) is the touchstone whereby*

*the finality contemplated by s. 12 of the Court-Fees Act may be tested.*" Their Lordships further proceed to enunciate the law thus:—

1. An order rejecting a plaint under O. VII, r. 11 of the Civil Procedure Code is not appealable when such order is based on a question of valuation pure and simple.

2. When the order necessarily involves a decision of the category or class under which a suit falls even though it incidentally decides a question of valuation, the order is appealable.

3. In cases falling under (1), where the order involves the question of jurisdiction, the High Court may interfere either under s. 115 of the Code of Civil Procedure or under s. 107 of the Government of India Act by virtue of the residue of jurisdiction which the court will always exercise wherever it appears that there has been something in the nature of the denial of a right of a fair trial" per Mullick, J., in *Braya Bhusan Trigumait v. Saris Chandra Tewari*.

4. Before or after an order of demand fructifies by non-compliance into a recorded order of rejection, the court contemplated in s. 12 of the Court-Fees Act may for good and sufficient reasons review its own order of demand on application by the plaintiff, or revise that order of its own motion

Their Lordships observed that "they were fortified in the above conclusions by the fact that though the Court-Fees Act s. 12 dates from 1870, the Code of Civil Procedure was remodelled in 1882 and again in 1908 and the Legislature would not have been in ignorance of the judicial interpretations placed on s. 12 in the various decisions referred to above of all the High Courts; nevertheless, the Legislature did not think fit either in 1882 or at any rate in 1908, to insert a simple provision in the Civil Procedure Code declaring a finality other than that declared by judicial interpretation between 1870 and 1908. The Court Fees Act is essentially a fiscal enactment. Its primary object is to protect the revenue and not to coerce the subject; and it is for this reason that the Legislature has intentionally so framed s. 12 and the relevant provisions of the Civil Procedure Code as to leave the question elastic. In any event, according to the well recognised practice of the Court, we should follow the firmly established *curies curiae* of the Calcutta High Court."

**When does a revision petition lie?** We have seen how the order of rejection of the plaint consequent on the non-compliance of the order of payment of additional court-fee is appealable. Now the next question for consideration is whether the party aggrieved by any decision of court about the question of court-fees is bound to wait till the plaint is rejected or whether he cannot seek redress at the earliest possible opportunity by having the order vacated or modified by invoking the revisional powers of the High Court under s. 115, C. P. C. On this question there is a conflict of views between the several High Courts as to whether a revision petition lies at all, and also whether

the order is revisable in all cases where the order is against the petitioner. Again in the same court, there is a marked difference of opinion as will be exemplified by a scrutiny of the decisions especially of the High Court of Madras.

**Bombay.**—The Bombay High Court takes the view that the order is revisable. A decision by a sub-court on a question of valuation determining the amount of court-fee, is notwithstanding its declared finality subject to revision by the High Court under s. 622, C. P. C. XIV of 1882, *Vithal Krishna v. Balkrishna Janandhen*, 10 B. 610.

**Calcutta.**—It has been held by the Calcutta High Court that the order is revisable if not under s. 115 of the code, at least under s. 15 of the Charter Act. *Sundara Mal v. Jessie Caroline Murray*, 16 C. L. J. 375, "It has been argued on behalf of the plaintiff that the rule should be discharged, first, because the decision of the subordinate judge is final under s. 12 of the Court-Fees Act; and secondly, because if the order is not final, this court has no jurisdiction to interfere with it in the exercise of its revisional jurisdiction. In so far as the first ground is concerned it is clear that s. 12 has no application to this case. It has been repeatedly ruled that s. 12 has no application where the question for decision is as to the class under which a suit falls and not merely of valuation in that class. It is sufficient to refer in support of this view to the decisions of this Court in the cases of *Ajoodhya v. Gunga*, 6 Cal. 249, *Omrao Mirza v. Mary Jones*, 12 C.L.R. 148, *Upadhyay v. Pershidh*, 23 Cal. 723, *Peary Shah v. Surajmal Marwari*, 16 C.L.J. 371 and *Studd v. Mati Mohto*, 28 Cal. 343. Section 12 is, therefore, no bar to the exercise of the jurisdiction of this court. In so far as the second ground is concerned, it has been contended that even if the decision of the subordinate judge is erroneous that is no reason why this court should interfere. It has been conceded, however, that the court has previously interfered with erroneous decisions of subordinate courts in this class of cases: *Vithal Krishna v. Balkrishna*, 10 Bom. 610. *Sree Nath v. The Secretary of State*, (1909) N.L.R. 11; *Krishna Das v. Hari Charan*, 14 C. L. J. 47; *Ranrup v. Shiya Ram*, 14 C. W. N. 932. But it is needless to examine the scope of our revisional jurisdiction or discuss the effects of the decisions mentioned at the bar. *Amir Hussain v. Sheo Vaksh*, (1884) L. R. 11; *Kritamma v. Chapa*; *Bhagwan Ramanuja v. Khethar Moni*, 1 C. W. N. 617; *Mathura Nath v. Umes Chandra*, 1 C.W.N. 626; *Raghunath v. Chatraput*, 1 C.W.N. 633; because, even if it be conceded that this court cannot interfere in the exercise of its revisional jurisdiction it is plainly competent to us to revise the proceedings of the court below under s. 15 of the Charter Act.

But in *Govindu Das v. Nitya Kali Dasi*, 51 I. C. (Cal.) 81, it was held that 'an order under s. 149 C. P. C. requiring the plaintiff to pay additional court-fee is not open to revision under s. 115 C. P. C.

inasmuch as there is another remedy available to the plaintiff as in case of dismissal of his suit for non-payment of the additional court-fee, he has a right of appeal.' But this is the decision of a single judge and no precedents are cited or relied on in the judgment.

**Change of view.**—In *Dodda Sannekappa v. Sakravva*, 36 I. C. 831 it was held that "the High Court can interfere in revision with an erroneous order for payment of deficient court-fee and it is not necessary that the plaintiff should wait for the dismissal of the suit by disobeying the order and then move in High Court by way of appeal or revision." This is again a judgment of a single judge.

The same view was taken in *Ramrup Das v. Mohunt Shiyaram*, 14 C. W. N. 932. "Where the plaintiff on being directed to amend the value of the suit and pay *ad valorem* fee moved the High Court without waiting for the dismissal of his suit for non-compliance with the order, it was held that the order in effect amounted to a denial of jurisdiction and that it was a fit one for interference in revision by High Court."

Similar is also the view taken in *The Collector of Maldah v. Nirode Kamini Dass*, 17 C. W. N. 21. "Where the court below decided that no court fee was payable, on an erroneous view of law, the High Court could interfere in revision under s 15 of the Indian High Courts Act"

**Again a change of view.**—See *Falkner v. Mirza Muhamad Syed*, 29 C. W. N. 627. "All other cases that have followed this case (*viz.*, 17 C. W. N. 21) are cases in which the courts below had fixed a valuation according to their judgment and different from that put by the plaintiff. The result of these authorities is that the court is empowered under the law to revise the valuation put by the plaintiff and if on such revision, it is of opinion that the valuation is insufficient or arbitrarily low, it has jurisdiction to fix the proper value. But no case has been brought to our notice which has gone to the length of holding that where a Court determines the valuation according to its judgment or holds that the plaintiff's valuation is correct, it commits such an error of law as to entitle the Court to interfere under s. 115 of the Civil Procedure Code. What the learned Munsiff had done in this case is that on an examination of the alleged facts of this case, he has come to the conclusion that the valuation as put by the plaintiff on the plaint is correct. That view may be right or may be wrong; but it cannot be said that the learned Munsiff has exercised a jurisdiction not vested in him or has failed to exercise the jurisdiction vested in him. There is another view of the matter, namely, that the decision of the Munsiff on the present question may be challenged in appeal from the decree in the suit. This is an additional reason why we should not interfere in the exercise of our revisional jurisdiction. We therefore think that this is not a case in which we should interfere under s. 115 of the Civil Procedure Code."

**Madras.**

**No revision lies.**—In *Kotilinga Mudaliar v. Board of Commissioners for Hindu Religious Endowments, Madras*, 1927 Mad. 1021 (2) it was held by a single judge that no revision lay. "It is indisputable that the court had jurisdiction to assess the court-fee under s. 12, Court fees Act, and it involved a confusion of thought to say that because the order which the court had jurisdiction to pass *resulted* (perhaps the word '*resulted*' is a mistake for '*might result*') in the rejection of the application, therefore assuming that the order was wrong, it was passed without jurisdiction. \* \* S. 115 requires that the order which it is sought to revise amounts to deciding a "case". Now if the "case" comprises no more than a direction to pay the court-fee within a certain time, it is impossible without anticipating what has not yet occurred, to say that the court has refused to exercise its jurisdiction to entertain the petition."

A similar view was taken in *Chinnaswami Pillai v. Pavayee Ammal*, 1927 Mad. 1162. The view is set out in the following extract. "A preliminary objection is taken that the High Court should not interfere under s. 115 of the Civil Procedure Code in a case of this kind. That was the view taken by Phillips, J., in *Acha v. Sankaran*, 1926 Mad. 768. No doubt, other judges of the Court have taken a different view, but with all respect, I prefer to follow Phillips, J. Petitioner has other remedies open to him and it is, I think, no answer to say that the appropriate remedy is more cumbrous than that he seeks to obtain by way of revision. Assuming that I can interfere in such a matter in revision, I am unable to see how any question of a jurisdiction arises. The lower court may be wrong, but it had jurisdiction to pass the order it did."

**A modification of the view.**—In *Mahomed Illiyas v. Mt. Rahima Bee*, 56 M.L.J. 302=1929 Mad. 191, it was held that although Civil Revision Petition lies when the decision of the lower court with regard to court-fee payable is unfavourable to the plaintiff, it does not lie when such decision is in plaintiff's favour as such decision, though to the detriment of the revenue, is not against the defendant, and as the mistake can be corrected by the appellate court under s. 12 of the Court-Fees Act. "As a matter of fact, in the case of various kinds of interlocutory orders, the High Court exercises its powers of revision. Where in regard to the court-fee payable the decision of the lower court is unfavourable to the plaintiff, it has been held that the High Court can in revision interfere with that decision. This is the view taken in *Karuppanna Thevar v. Angammal*, 1926 Mad. 678, and in *Venkataramayyar v. Narayanaswami Ayyar*, 1925 Mad. 713. Kumaraswami Sastri and Wallace, JJ., adopted the same view in *Kulandai Pandichi v. Ramaswami Pandia*, 1928 Mad. 416=51 M. 664, where the learned judges review the authorities on the point. In the present case, the question arose in a different way. The decision is not against the plaintiff, but it does

not follow that it is against the defendant. \* \* Where an order in regard to court-fee happens to be in favour of the plaintiff, it does not mean that it is against the defendant though it may operate to the detriment of the revenue; See s. 12 of the Court-Fees Act. As has been pointed out in *Kulandai Velu Nachiar v. Ramaswami Pandia Thalavan*, 1928 Mad. 416 = 51 M. 664, where the order is unfavourable to the plaintiff, it may result in great hardship to him and the interests of justice may demand that the High Court should at once rectify the error without waiting till the suit is finally decided and an appeal is then filed. But if the lower court's order which is favourable to the plaintiff happens to be wrong, there is another remedy open which is quite adequate as the mistake can be corrected by the appellate court under s. 12 of the Court-Fees Act, which uses language which is very significant. \* \* There is very little authority on this point but such authorities as there are supports the view taken in this suit. In *Falkner v. Mirza Muhamda Syed Ali*, 1925 Cal. 814, the learned judges point out the difference between the case where the order is in favour of the plaintiff and where it is against him and express the view that whereas a Civil Revision Petition lies in the latter case, it does not in the former."

The same view is taken in *Kattiya Pillai v. Ramaswami*, 56 M. L. J. 394 = 1929 Mad. 396, in which it has been held that an order relating to a question of court-fee cannot be interfered with in revision if it is favourable to the plaintiff and is the only ground of revision, but the High Court sitting in revision, has jurisdiction to interfere with the order of the lower appellate court, whereby it erroneously decides that the court of the first instance has jurisdiction to entertain a suit. "A preliminary objection has been taken that no revision lies. Where the order complained against relates only to a question of court-fee, it has been held that the High Court can interfere in revision if the lower court's order is unfavourable to the plaintiff, *Venkataramani Ayyar v. Narayanaswami Ayyar*, 1925 Mad. 713; *Karuppanna Thevar v. Angammal*, 1926 Mad. 678 and *Kulandaivelunachiar v. Ramaswami Pandiar*, 1926 Mad. 416 = 51 M. 664. It has also been held, if the order is favourable to the plaintiff, the High Court does not interfere with that order in the exercise of its powers of revision. *Muhamad Illiyas v. Rahima Bi*, 1929 Mad. 191. In this case dealing first with the question of court-fee, the defendants say that a larger court-fee is payable than what the subordinate judge has held as the proper fee. If the question is therefore one relating to court-fee alone, I should refuse, following *Muhamad Illiyas v. Rahima Bi*, 1929 Mad. 191, to set aside the order in the exercise of our revisional powers. In this case the question is not only one of court-fee but also of jurisdiction."

In *Secretary of State for India v. Ragunathan*, 56 Mad. 744, where the Government, and not the defendant, sought to revise the order of the lower court made to the detriment of the revenue, it was argued that on that ground the case was distin-

guishable from 56 M. L. J. 302, but it was held that that fact did not alter the position and that the High Court would not interfere in revision, the order sought to be revised being in favour of the plaintiff. It was also doubted whether the Government not being a party to the suit in which the order was made could prefer a revision to the court but the point was left open. One would have thought that the reason for entertaining a revision preferred by the plaintiff, *viz.*, that he is an aggrieved party, (while a defendant never is) would equally apply in the case of a revision preferred by the Government who is necessarily aggrieved by any order made by the lower court to the detriment of revenue. Indeed the Government appears to have a better claim than even the plaintiff for revision, as another remedy is open to him, *viz.*, a right of appeal from the final decree in the suit, which remedy is not open to the Government. As regards the point raised, whether the Government is a party to the suit, it has to be observed that even supposing that the Government is not a party, it is Submitted, it is open to the Government to invoke the High Court for the exercise of its revisional jurisdiction under s. 115 C.P.C., as the High Court can *suo moto* call for records from the lower courts under that section. Though as a matter of practice this revisional jurisdiction is exercised only on the application of parties the jurisdiction itself is not confined to such cases. *Muthu Chettiar v. Narayanan*, 51 Mad. 672 (676).

Again in *Rani Kulandai Pandichi v. Indran Ramaswami*, 51 Mad. 664 = 55 M. L. J. 345 = 1928 Mad. 416 = 27 L. W. 286, it was held that a revision under s. 115 of the Civil Procedure Code lies to the High Court against an erroneous order of trial court demanding a heavier court-fee than was properly due on a plaint filed in that court. This revision petition arose out of an order of the Subordinate Judge calling upon the plaintiffs to amend the valuation in the plaint and to pay additional court-fees. A preliminary objection has been taken as to the maintainability of the civil revision petition on the ground that an appeal would lie against an order dismissing the suit if the court-fee was not paid. Their Lordships observed as follows: "We are unable to uphold this contention. We think that where a Judge on an erroneous view of the court-fee payable refuses to proceed with the suit until the proper court-fee is paid he fails to exercise jurisdiction as the party is entitled to have his case tried if he paid the court-fee. In *Sudalai Muthu Pillai v. Sudalai Muthu Pillai*, 17 L. W. 623 = 1923 Mad. 270, Oldfield, J., held that in such cases the provisions of s. 115 of the Civil Procedure Code have been complied with. As regards the contention that a conditional order the non-compliance of which would entail the dismissal of the suit is not revisable under s. 115 the learned judge observes: 'Generally it is impossible to hold that an order directing the dismissal of an appeal in case the payment is not made, is not a refusal to exercise jurisdiction in that appeal.' In *Dodda Sannekappa v. Sakravva*, 36 I. C. 831, it was held by Srinivasa Aiyangar, J., that in a suit for a declaration that certain transactions were not binding on the plain-



tiff he is entitled to put his own valuation on the relief which he seeks, that the High Court can interfere in revision with an erroneous order for payment of deficient court-fee and that it is not necessary that the plaintiff should wait for the dismissal of the suit by disobeying the order and then move the High Court by way of appeal or revision. \* \* \* In *Ram Rup Das v. Mohunt Shiya Ram Das*, 14 C. W. N. 932, the High Court interfered in revision where the order like the present one simply directed payment of an additional sum as court-fees. The learned judges in dealing with the preliminary objection that no revision lay, observed "But this court has in more than one case recently interfered with interlocutory orders where such orders appear to be a denial of jurisdiction and in this case to inform a member of the public who is presumed to bring a declaratory suit in the interest of the public that he cannot bring such a suit without valuing his claim at the value of the property involved, does really in our opinion amount to shutting him out of the right of suit and it would be useless to defer this matter until the plaintiff had by neglecting to take any further steps in the matter incurred the rejection of his plaint." In *Karuppana Thevar v. Angammal*, 23 L. W. 582=1926 Mad. 678, the suit was by a reversioner for a declaration that a particular alienation by the widow was not binding and for a receiver and the question was what was the court-fee payable. A revision petition was filed against the order of the subordinate judge and the preliminary objection was taken as to whether a revision lay. Venkatasubbarao, J., following the decisions in *Doda Sannekappa v. Sakravva*, 36 I.C. 831, and *Ram Rup Das v. Mohunt Shiya Ram Das*, 14 C.W.N. 932, above referred to, held that the High Court could interfere in revision. In *Sudalaimuthu Pillai v. Periyasundaram Pillai*, 48 M.L.J. 514, Krishnan, J., held that a revision would lie to the High Court against an erroneous order of the subordinate judge as to the proper court-fee payable. The learned judge was of opinion that it was open to the court to interfere because the question was really one of jurisdiction as the plaint would have to be rejected if proper stamp duty was not paid and that the remedy by way of appeal was a cumbrous remedy. A similar view was taken by Venkatasubbarao, J., in *Vakataaramani Ayyar v. Narayanaswami Ayyar*, 21 L. W. 649=1925 Mad. 713.

"A contrary view has however been taken by Phillips, J., in *Acha v. Sankaran*, 23 L. W. 752=1926 Mad. 768. The learned judge distinguished the case in *Sudalaimuthu Pillai v. Sudalaimuthu Pillai*, 17 L. W. 623, above referred to on the ground that in that case the order demanding additional court-fee was coupled with an order of dismissal in case of default. It is difficult to see how the mere addition of the consequence which would under r. 11 of O. 7 Civil Procedure Code follow from the non-payment of the court-fee demanded would make any difference as the same consequence would follow even if the order was silent as to what was to be done in case of

non-payment. The other Madras decisions above referred to were not brought to the notice of the learned Judge and he preferred to follow the decision of the Patna High Court in *Mussammatt Lachmi-pathumari v. Nand Kumar Singh*, 5 Pat. L. J. 400, which view Krishnan, J., was not inclined to follow and the decision of the Calcutta High Court in *Gobindu Das Nath v. Mitya Kalidasi*, 51 I. C. 581. In *Chinnaswami v. Pavayee*, 1927 Mad. 1162, Waller, J., followed the decision of Phillips, J., in *Acha v. Sankaran*, 23 L. W. 752, and observed that although other Judges of this Court have taken a different view he prefers to follow the view of Phillips, J., on the ground that the petitioner has other remedies open to him and that it is no answer to say that the appropriate remedy was more cumbrous. It seems to us that while courts would not generally interfere in revision where an equally efficacious remedy is open to the party, they have in several cases interfered where the remedy by way of appeal would entail unnecessary hardship on the party, involve multiplicity of proceedings or would not give the party as complete and efficacious a relief as interference with an interlocutory order and the case satisfied the requirements of s. 115 of the Civil Procedure Code \* \* It is difficult to see why if the case is one of declining to exercise jurisdiction and the requirements of s. 115 are otherwise satisfied the High Court should decline to interfere when by timely interference it will save a great deal of unnecessary hardship; we think the mere fact that an appeal would lie later on the consequential orders passed by the Subordinate Judge if the stamp is not paid, is no ground for refusing to entertain the petition to revise the order demanding an erroneous court-fee and declining to proceed with the suit unless the sum erroneously demanded is paid."

**Nagpur.**—A similar view is taken in Nagpur. See *Harihar Rao v. Satu Bai*, 1927 Nag. 256. "Revision will lie against an order demanding additional court-fees." Again at p. 258. "Instead of asking for an extension of time for the payment of the court-fee demanded, during which he could get the correctness of the demand tested by an application for revision, the plaintiff has followed the usual course of refusing to pay, allowing his plaint to be rejected and appealing against the order of rejection. That would be unwise even if it appears fairly certain that the demand for extra court-fee is wrong as the finding that it is not, means that the rejection of the plaint was right and indeed inevitable. It has recently been held in the Allahabad High Court that a demand for further court fees is not within the terms of s. 115, C. P. C. The contrary view has however been held in this court for many years and applications for revision of such orders have always been accepted as a matter of course."

**Patna.**—The gist of the law on the subject is admirably summed up in *Mani Lal v. Durga Prasad*, 3 Pat. 930. Their Lordships observed as follows:—"Ordinarily an interlocutory order is not capable of revision, particularly when there is another remedy available to the injured party; but where the order complained against is such as is

calculated to cause irreparable loss to the injured party and there is no right of appeal and no remedy available to the party, an interlocutory order may be revised. An order demanding an improper court-fee involving the jurisdiction of the court to try the suit though an interlocutory order attracts the revisional jurisdiction of the High Court. There being no appeal or any other remedy from the order itself demanding the additional court-fee the payment of proper court-fee may be an irremediable injury to the plaintiff \* \* It is urged as a preliminary objection on behalf of the defendants that the order is not capable of revision, inasmuch as it is an interlocutory order only and the plaintiffs ought to have waited until their plaint was rejected under O. VII, rule 11 of the Code, and then appeal against the final order rejecting the plaint which comes within the definition of decree in s. 2, clause 2 of the Code. In support of this contention reference has been made to the following cases. *Sheopal Singh v. Badri Singh*, 38 I.C. 206; *Guise v. Jais Raj*, 15 All. 405; *Gopal Das v. Alaf Khan*, 11 All. 383; *Chatter Singh v. Lakraj Singh*, 5 All. 293; *Farid Ahmed v. Dulari Bibi*, 6 All 233; *Nizam of Hyderabad, in re*, 9 Mad 256; *Mussammat Harmoozi v. Mussammat Ayasha*, 1 Pat. L. T. 296; *Chandi Ray v. Kripal*, 15 C. W. N. 682. These cases do not relate to court-fee matters and an immediate remedy by way of appeal was available to the injured party. As to whether an order demanding additional court-fee is capable of revision, there has been a divergence of opinion. On the one hand it has been held that an order demanding additional court-fee is not capable of revision on the ground that the plaintiff could make default in the payment and have his plaint rejected and thus be able to question the order in appeal. Vide *Gobindu Das Nath v. Nitya Kalidasi*, 51 I. C. 581; *Chunilal v. Boshan Lal*, 53 I. C. 427; *Lakshmipathi Kumari v. Nandakumar Singh*, 1 P. L. T. 267 = 56 I. C. 649 and *Bhubeneshwari Pashad v. Mohan Lal*, 1 P. L. T. 5 = 55 I. C. 786.

A contrary view is taken in the case of *Bankey Behari v. Ram Bahadur*, 4 P. L. J. 191 and *Nauratan Kal v. Wilsferd Joseph Stephenson*, 4 P. L. J. 195. In these cases it was held that the High Court can interfere at that stage of the cases regarding the erroneous finding as to the court-fee payable and thus save the parties from litigation, unnecessary expense and undue delay. There is, however, no conflict in the principle underlying these conflicting decisions. The principle is that ordinarily an interlocutory order is not capable of revision particularly when there is another remedy available to the injured party: but where the order complained against is such as is calculated to cause irreparable loss to the injured party and there is no right of appeal and no remedy available to the party, the interlocutory order may be revised under s. 115 of the Civil Procedure Code read with s. 15 of the Charter Act and s. 107 of the Government of India Act. These are the tests laid down on a review of the authorities, both English and Indian, in the case of *Amjad v. Ali Hussain Johur*, 12 C. L. J. 518 = 15 C. W. N. 353 as also in the case

of *Chandramani Koer Basdeo v. Narayan Singh*, 4 P. L. J. 57 and would seem to have been now generally accepted.

The question whether an order directing additional court-fee to be paid satisfies the aforesaid tests depends upon the circumstances of each case. If it is an order merely assessing the valuation of the property and the only question involved is as to the amount upon which the court-fee has to be paid, the decision of the court of first instance would appear to be final under s. 12 of the Court-Fees Act. That section has been enacted in the interest of revenue and is final so far as that court is concerned. There will be no appeal or revision from that order. But the question may, under certain circumstances, be raised in an appeal from the final decree made in the suit. \* \* And where it involves the jurisdiction of the court to try the suit the decision involves a question of jurisdiction and a wrong decision on the point would amount to an assumption of jurisdiction not vested in it by law, or a failure to exercise jurisdiction vested in it by law. \* \* Therefore it is wrong to say that the plaintiff ought to have waited till his plaint is dismissed and then pay another court-fee for lodging an appeal against the final decree and thus ultimately get a redress which in many instances may not be sufficient. \* \* \* Thus an order demanding an improper court-fee involving the jurisdiction of the court to try or not to try suit, though an interlocutory order, fulfils the tests referred to above and will attract the revisional jurisdiction of the court under s. 115 of the Civil Procedure Code and s. 107 of the Government of India Act. \* \* As to whether interlocutory orders in such matters decide a case under s. 115 of the Code, their Lordships in that very case point out that the word "case" is not defined and in their opinion it cannot be confined to a litigation in which there is a plaintiff, who seeks for a relief or damages or otherwise, against a defendant who is before the court. Therefore the decision of matter relating to court-fees will be decision of a "case" within the meaning of the word in s. 115 of the Code. \* \* If on account of its wrong decision the court refuses to exercise a jurisdiction vested in it by law, the revisional jurisdiction of the High Court will come in."

Again in *Musst. Lachmipathi Kumari v Nand Kumar Singh*, 5 Pat L. J. 400, their Lordships observed as follows:—"The High Court will not interfere in revision with an interlocutory order where there is another course open to the applicant and no irremediable harm can be suffered by the interlocutory order."

An exactly similar case arose in *Lala Bhuvansari v. Mohan Lal*, see footnote in 5 Pat. L. J. 400. It approved the decision in *Chundraman v. Basdeo Narain*, 4 P. L. J. 57, where the learned judges remarked that "although in *Banki Behari v. Ram Bahadur*, 4 P. L. J. 191, a divisional bench of this court has interfered with an interlocutory order of this description, generally this court follows the *cursus curiae* of the Calcutta High Court and the course has

always been not to take action under s. 115 when there is another course open and no immediate harm can be suffered by the interlocutory order."

**Conclusion**—Now what is the net result of these several decisions both as to the existence of a right of appeal and of revision? Rightly or wrongly the Legislature has chosen to enact that the decision as regards the valuation should be final. If it is to be final, then it is submitted with due deference that it will be nullifying that provision to hold that the order is revisable and that the order rejecting a plaint in consequence of the non-payment of the additional fee being a decree under C. P. C. is appealable. This appealability or revisability is the touchstone as to the finality of the decision. A decision cannot both be final and subject to appeal or revision. The section is clear in that it lays down that the order shall be final. Still the view taken is that it could be revised and restrictions are grafted on to that, to the effect that the order could be revised only if unfavourable to the petitioner. This is the view taken by Venkata-subba Rao, J., of the Madras High Court in *Mahomed Illiyas v. Mt. Rahima Bee*, 56 M.L.J. 302. His Lordship's opinion is that an order favourable to the plaintiff is not necessarily unfavourable to the defendant and the aggrieved party may be the Government which loses court-fee by any decision favourable to plaintiff. His Lordship says that such orders could not be altered as the court could act under s. 12 (ii) when the case comes before it in appeal. But how can it be presumed that the case does come before the appellate court? If it does not, then an erroneous order as to court-fees may pass unnoticed. The leakage of revenue could be adequately checked only if there is a periodical inspection of the records by a body of trained Court-fee Examiners.

Regarding appeals, it is again doubtful how far in appeals against orders rejecting plaints, the decision as to court-fee could be agitated. S. 96, C. P. C., lays down that an appeal lies from every decree in a suit unless there is anything to the contrary in the Code or any other enactment for the time being in force. And s. 12 (ii) is such an enactment. If s. 96, C. P. C. is read with s. 12 (ii) of the Court-Fees Act, and s. 2 of the C. P. C., it must follow that the decision as to valuation could not be agitated in an appeal against an order under O. 7, r. 11, C. P. C. Still such appeals are allowed and it is for the consideration of the courts to give effect to the clear words used in the statute or for the legislature to amend s. 12 to bring it in consonance with the judicial interpretation put upon it.

**Review.**—The court has full jurisdiction to review its own decision on the question of court-fees. "There is nothing in the Civil Procedure Code or in s. 12 of the Court-Fees Act to debar a court from reviewing for good and sufficient reason its decision on all questions relating to valuation for the purpose of determining the amount of fee chargeable on the plaint. On the contrary under s. 151

of the Civil Procedure Code of 1908 the court has inherent power to make such orders as may be necessary for the ends of justice in order to prevent the abuse of the process of the court, and under s. 152, the court has the right to correct arithmetical mistakes in orders generally or errors arising therein from any accidental omission." *Chandramani Koor v. Basdeo Narain Singh*, 4 P. L. J. 57. An application for review had however been filed in this case, and on that ground it was distinguished and not followed in *Harihar Prasad v. Maheswari Prasad*, 3 Pat. 654, where it was held that the decision as to sufficiency of the court-fee was a judgment and could not be altered save as provided in order XX, rule 3 C. P. C. See also *Mst. Debi v. Secretary of State for India in Council*, 1935 A. L. J. 376 = 1935 All. 455, where review of a previous order demanding additional court-fee was allowed and refund of court-fee collected in excess was granted.

A recent decision of Justice Venkatasubba Rao in *Lakshmana Aiyar v. Palaniappa Chettiar*, 69 M. L. J. 479, deals with the question of the power of court to review its own order regarding the adequacy of court-fees in any particular suit. In the suit which gave rise to this Civil Revision Petition, there was an office note regarding the question of court fee payable on the plaint and a decision of the Subordinate Judge holding that the fee paid was adequate. Later on, there were certain Interlocutory Applications and while resisting them, the defence raised the objection that the suit itself was not maintainable as proper court-fee was not paid. The judge then referred to his previous order and upheld it. Thereafter, issues were framed and one of the issues related to the question of the sufficiency of court-fee. Again, it was held by the District Court to which the suit was transferred that it had no jurisdiction to reconsider the adequacy of court-fee paid. The touring Court-Fee Examiner having examined the pleadings later, put up a note that the proper court-fee was not paid and the presiding Judge upheld the contention of the Court-Fee Examiner and directed the party to make good the deficit court-fee. The aggrieved party, the plaintiff, moved the High Court in Revision. On the facts of this case, there is absolutely no doubt that the decision regarding court-fee must be taken to be final under the provisions of Clause (1) of Section 12, Court-Fees Act. There are however certain observations in the judgment which though perhaps *obiter* may have a far reaching effect. His Lordship observes: "I have said that three previous orders had already been made upholding the plaintiff's contention as regards the proper court-fee payable. In strict law, even if the matter had not gone beyond the stage of the first order, the lower court's power to revise the valuation would have come to an end." This means that where the court has passed an order to the effect that the court-fee paid is correct, there will be no question of a further reconsideration at the instance of anybody, whether it be the party or the Government or even the court itself. His Lordship further states thus, "There is nothing in the Court-Fees Act

which requires that the question as to the sufficiency of the court-fee should be decided in the presence of the defendant or after notice to Government." When a plaint is filed in court, it is the duty of the ministerial officer to check it and see whether the proper court-fee is paid. If he feels any doubt or if he finds that the court-fee paid is inadequate, it has to be placed before the Judge who passes an order either upholding the office contention or otherwise. This has to be decided before the plaint is numbered and filed. Strictly, no plaint can be filed unless the presiding officer considers that the proper court-fee is paid. And therefore it follows that if a plaint has been filed, it means there is an antecedent decision that the court fee paid is correct. See *In re Lakshmi Ammal*, 49 M. L. J. 608. The result will be that even though the court-fee be really inadequate, the defendant has no right to raise that question in the written statement, much less for court to frame an issue on that point. If that were the case, it is rather difficult to understand the necessity for the words "final between the parties" in clause (1) of section 12. If the opposite party has no right to agitate the question, it is not clear why the legislature should have thought it necessary to qualify the word 'final' by the addition of the words "between the parties". His Lordship further states that "the defendant has strictly speaking no legal right to raise a plea regarding court-fee but his function is deemed to be subject to the court's leave merely to assist it in coming to a proper decision." The difficulty that may perhaps be experienced in a practical application of this view which, it is submitted, is theoretically correct, would arise thus. The court being bound to decide the adequacy of court-fee before it takes the plaint on its file has to come to a decision *ex parte* and the only other party interested in presenting any other aspect of the question is either the Government or the opposite party. And if they are precluded from putting that forward, then, there is absolutely no opportunity for the court to decide the matter as fully as it could otherwise do when the contending views are presented to it by the two opposing parties. One other difficulty that may arise will be whether by virtue of its decision, the powers of review possessed by a court under the Civil Procedure Code and from its inherent jurisdiction can be deemed to be lost merely because there is the absence of any specific provision in the Court-Fees Act for that purpose. It is submitted that perhaps the proper view may be that where there is no statutory bar under the Court-Fees Act for the exercise of any powers which courts may have, those powers cannot be deemed to have been taken away by the absence of a specific provision in the Act itself. If that were not so, it is not clear how Revision Petitions are allowed, when there is no provision for same in the Court-Fees Act. Further, the effect of this decision will be practically dealing a death-blow to the scheme of inspection of lower courts by Court-Fee Examiners. If the question of court-fee has been considered by the court even if it be *ex parte*, and if the matter could not be reconsidered by court, at

the instance of any one afterwards, there seems to be no purpose served by the Court-Fee Examiners examining all pending suits and bringing to the notice of the presiding Judge cases where the court-fees paid are deficient. It is this result which has been averted by the intervention of legislature in Bengal where the Court-Fees Act has been recently amended in 1935 which has cleared the ground at least in some obscure portions of the Act. Section 8B of the Bengal amendment provides that "in every suit or appeal the Court shall, after the registration of the plaint or memorandum of appeal and in every case before proceeding to deliver judgment record a finding whether a sufficient court-fee has been paid." If we pause and enquire as to how this provision about the determination of the sufficiency of court-fee is to be after the registration of the plaint, it will be seen that a rough and ready or tentative determination of the court-fee is made at the outset, of course *ex parte* and later on there is a finding recorded obviously in the presence of parties. From this it appears that the court decides tentatively as to what court-fee is payable and when such payment is made, the plaint or appeal is registered and afterwards the question of the adequacy of court-fee is considered and a definite finding recorded on the question. It is this finding that constitutes the decision under clause (1) of section 12.

**Original side of the High Court**—Section 12 does not apply to the Original Side of the High Court and the first clause of s. 12 does not apply to the High Court at all.

**Estoppel.**—Where on an objection being taken as to the insufficiency of court-fee on a memorandum of appeal it appeared that the court-fee was exactly the same as that on the plaint, and that the trial judge had on an objection by the defendant framed an issue on the point and decided it in favour of the plaintiff and the defendant had accepted the decision and stamped his own appeal in the appellate court accordingly, it was held that under the circumstances the objection could not be entertained. *Chhunnu Lal v. Bank of Upper India (Punjab)*, 40 I. C. 904.

**Insufficiently stamped document.**—In *Mt. Jantan v. Ahmed*, 1928 Lah. 221 at p. 223 it was observed as follows:

"The contention of the learned counsel was that the plaint being insufficiently stamped the decree passed thereon was void, and consequently no appeal lay at the instance of the plaintiff. I confess, I am unable to follow that argument. O 7, r. 11, C. P. C. clearly provides that if the plaint is written upon paper insufficiently stamped, and the plaintiff on being required by the court to supply the requisite stamp paper within the fixed time, fails to do so, then the court shall reject the plaint. This provision of the law read with s. 28 of Court-Fees Act clearly implies that opportunity has to be given to the party concerned to pay the proper stamp, and it is on his failure to do so that the court is entitled to decline to look at the document. But I am unable to see



that if the court accepts an insufficiently stamped plaint, the proceedings which follow thereon are void. Clause 2 of s. 12 Court-Fees Act also supports the view."

**Decision as to court-fees where question of jurisdiction is involved.**—Where a suit was dismissed by a subordinate judge, and on appeal to the District Judge, he differed from the subordinate judge as to the value of the properties and returned the appeal to be presented to the proper court, it was held that the District Judge had jurisdiction to pass the order that he passed, and that no revision lay. *Mt. Ladli Begum v. V. Ramdoss and others*, 1925 Pat. 488. It follows from this view that an appeal on the ground of defect of jurisdiction may, if successful, disturb the finality of the valuation for the purpose of computation of the court-fees in suits coming under s. 8 of the Suits Valuation Act, but there can be no doubt that the first clause of s. 12 of the Court-Fees Act is subject to the provisions of the Suits Valuation Act; and so it has been held in *Peary Shah v. Surajmal Marwari*, 17 C. W. N. 503 = 15 I. C. 575 = 16 C. L. J. 371. The court vested with jurisdiction to hear the appeals will in deciding the question of jurisdiction be competent to levy deficit court-fee on the plaint.

### Clause II.

**Analysis of the clause.**—This clause deals with cases of deficit court-fee paid in suits that come up before an appellate court and prescribes the procedure to be followed for the realisation of the deficit. The appellate court can take action only if the following conditions are satisfied.

- (a) The suit must come up before an appellate court in appeal, reference or revision.
- (b) The appellate court must consider that the court-fee has been wrongly decided by the lower court.
- (c) That decision must have been to the detriment of revenue.

Then the following procedure shall be adopted :—

- (a) The party by whom the deficit fee has been paid should be called upon to pay the additional fee.
- (b) The court shall fix a time for the payment of the additional fee.
- (c) The suit shall be stayed until the additional fee is paid.
- (d) If the fee is not paid within the time fixed, the suit shall be dismissed.

### When can appellate court take cognisance ?

**1. Appellate court can take action *suo motu*.**—An appellate court can *suo motu* decide the question of the adequacy of court-fees paid in the trial court. It is not necessary that one or the other of the parties before it should formally agitate the question before it. *Takana Kavundan v. Alagiri Kavundan*, 25 I. C. 506.

The appellate court can take up the question *suo motu* and determine whether the court-fee has been properly collected in the lower courts.

Even where an appellant is not appealing from that part of the decree of the lower appellate court which allowed his cross objection, for which he did not pay the proper court-fee, the appellate court has inherent jurisdiction not to entertain the appeal before the deficit is made good as it is a default arising out of the same suit. The Act gives discretionary power to insist upon the appellant to pay the proper court-fees throughout the litigation as a condition precedent to allowing him to come before it in appeal. *Rasik Behari Prasad v. Hriday Narayan*, 1 Pat. 471 = 1922 Pat. 284.

Once the court disposes of the appeal, it becomes *functus officio* and could not call upon any party to make good any deficiency in court-fees. *Abdulla v. Secy. of State*, 1925 Lah. 131.

As a general rule it is desirable that where an appellate court has to deal with the question of recovering a deficit court-fee payable by the appellant in the lower court or courts, the matter should be dealt with at the earliest possible moment after the deficit is discovered. *Hitendra Singh v. Rameswar Singh*, 1921 Pat. 88.

## 2. The points to be considered are these:

(a) The provisions of a fiscal statute should be so construed as not to furnish a chance of escape and a means of evasion of the payment of fee. *Raj Rajeswari Jin v. Gathi Krishna*, 1924 Cal. 953 = 82 I.C. 128.

(b) "The Court-Fees Act was passed not to arm a litigant with a weapon of technicality against his opponent but to secure revenue for the benefit of the State. This is evident from the character of the Act and is brought out by s. 12, which makes the decision of the first court as to value final as between the parties, and enables the court of appeal to correct any error as to this, only where the first court decided to the detriment of the revenue." Where the defendant seeks to utilise the provisions of the Act, not to safeguard the interests of the State but to obstruct the plaintiff and does not contend that the court wrongly decided to the detriment of the revenue, but that it dealt with the case without jurisdiction, such a plea which was advanced for the first time at the hearing of the appeal in the District Court, is misconceived and was rightly rejected by the High Court. *Kachappa v. Shiddappa*, 24 C. W. N. 33 = 43 B. 507 (P. C.).

(c) As observed by Wallace, J., in 40 M. L. J. 608, *In Re Lakshmi Ammal*. "The scheme of s. 12 of the Court-Fees Act is to see that the revenue is not defrauded, that the proper fee payable to the Government as the 'price' of the trial of the suit has been paid. It is difficult to see how a decision on that point can rest upon the option of parties, or to say that the Act deliberately restrains courts from interfering on behalf of the revenue unless the parties them-

selves whose interests are in the main opposed to any increase in the court-fee paid, move in the matter. It is obvious that the section is intended to permit the taxing officer of a court to raise the question, *suo moto*, whether the parties have raised this or not. The Privy Council has clearly laid down in *Rachappa Subba Rao v. Siddappa Venkat Rao*, 43 B. 507 at 518 = 36 M.L.J. 347 P. C. that 'the Court-Fees Act was passed not to arm the litigant with a weapon of technicality against his opponent but to secure revenue for the benefit of the State. This is evident from the character of the Act and is brought out by s. 12 which makes the decision of the first court as to value final as between the parties and enables a court of appeal to correct any error as to this only where the first court decided to the detriment of the revenue.' \* \* But while, when the parties have raised the point, the express decision of the court will be final between them, the section permits the appellate court *suo moto*, to raise the point in the interest of the revenue. This is the view laid down in *Shama Sundari v. Hurro Sundari*, 7 C. 348, with which I respectfully agree. And the same view underlies the decisions in *Narayana Singh v. Chathurbuj Singh*, 20 A. 362, and *Surendranath v. Sitanath*, 21 I.C. 943, (the Calcutta High Court), and the decision of the Madras High Court in *Tekanna Kavundan v. Alagiri Kavundan*, 25 I. C. 506 and it is not opposed to that of the Full Bench in *Amjad Ali v. Mahomad Ismail*, 20 A. 11 (F. B.) The case reported in *Sha Jahan Bibi v. Earsin Dewan*, 16 I. C. 46, raised and decided a question of jurisdiction only."

*Shama Sundari v. Hurro Sundari*, 7 C. 348 was a suit, instituted and tried on the merits in the court of a Subordinate Judge without any objection being taken, either by defendants or by the court, that the plaint was insufficiently stamped. The defendants appealed on the merits, and the District Judge being of opinion that the stamp on the plaint was inadequate called upon the plaintiff to pay the additional fee which would have been payable, had the objection been taken and the question rightly decided in the court of first instance. It was held on second appeal that the order of the judge was properly made under s. 12, cl. 2 of the Court-Fees Act.

**3. No need for distinct issue on the question and decision thereon.**—There need not be any distinct issue raised in the lower court and a formal decision thereon by it, before the appellate court could consider the question of the adequacy or otherwise of the court-fees paid. *Shama Sundari v. Hurro Sundari*, 7 C. 358. "It is not necessary for the application of s. 12 (ii) that there should have been a final decision on the question of the sufficiency of the court-fees in the court below." *Bidhu Bhusan Bakshi v. Kalachandaraï*, 1927 Cal. 775. It was held in *Shama Sundari v. Hurro Sundari* 7 C. 348, that the words "every question relating to valuation \* \* on a plaint \* \* shall be decided by the court in which such plaint is filed etc.," do not carry with them the meaning that a distinct question or issue relating to valuation must be raised, and a formal

decision thereon passed by the court of first instance before a court of appeal can interfere.

A plaint which was insufficiently stamped was filed in the City Civil Court, and was accepted without objection by the Sheristadar who is the chief ministerial officer of that court, entrusted with the duty of checking the pleadings filed in that court, and of seeing whether the proper court-fee had been paid thereon. The suit was dismissed by the City Civil Judge, and on appeal by the plaintiff, the Taxing Officer of the High Court demanded from the plaintiff the difference between the court-fee paid by her in the City Civil Court and the court-fee payable by her according to the law. The plaintiff contended that, as there was no decision by the City Civil Judge, under s. 12 of the Court-Fees Act as to the proper court-fee payable on the plaint, the Appellate Court had no power under s. 12 (2) of that Act to require her to pay additional court-fee. It was held overruling the contention, that the act of Sheristadar in accepting the plaint amounted to a decision by the City Civil Judge as to the court-fee payable on the plaint under s. 12 (1) of the Court-Fees Act, and that the Taxing Officer was therefore entitled under s. 12 (2) of that Act to insist upon the payment of the difference. The words "shall be decided by the court" in s. 12 (1) do not mean that an issue shall be raised and decided by the court. All that they mean is that the court either the presiding officer or the ministerial officer who is charged with that duty has to determine it. *In re Lashmi Ammal*, 49 M.L.J. 608=91 I.C. 729=1926 Mad. 96. At page 610, Wallace, J., observes: "So far as we are aware, this is the practice obtaining in all moffussil courts. Plaints and petitions are received by the chief ministerial officer who files them if he is satisfied that they are properly stamped. If he finds that they are not properly stamped, he draws the attention of the pleader concerned, to the fact and the deficiency is made up. If there is a difference of opinion between the chief ministerial officer and the pleader concerned, the matter is placed before the judge or the presiding officer of the court, who decides what the proper court-fee is. If objection is taken by the opposite side, as to the correctness of valuation, or court-fee, an issue is raised as regards that, and the court decides what the proper valuation is, and what court-fee should be paid. The wording of the section offers no difficulty, since in any case, the trying court must decide the question of court-fee impliedly, or explicitly, before it can proceed to try the suit. If the court is not satisfied that the plaint is properly stamped, it must dismiss the suit, unless the proper stamp fee is paid—See O. 7, r. 11 C. P. C. If the question is not explicitly raised and the court proceeds with the trial, the court has impliedly decided that the stamp is sufficient. If the parties or the taxing officer specifically raise the point then the court gives an explicit decision thereon. In either case there is a decision of the court." See also *Dyal Singh v. Ramrakha*, 15 I. C. 463 (Lah.) cited *infra*.

**Second appeals.**—Though s. 12 occurring as it does in a chapter headed "Fees in other courts and public offices" as contrasted with

the heading in the preceding chapter entitled "Fees in the High Court etc.," indicates that s. 12 is not applicable to the High Court, it has been held that it is only clause (1) of the section that does not so apply and clause (2) is applicable even to High Court. *Krishna Mohan v. Raghunandan*, 4 P. 336 = 87 I. C. 137 = 1928 Pat. 392. The High Court is bound to see that the proper fee is levied in the first appellate court, when the matter comes before it in Second Appeal, Reference or Revision, *Chennappa v. Raghvendran*, 15 M. 29; *Nibal Chand v. Ghulam Muhammad*, 19 I. C. 856; *Narain Pershad v. Kameshwar*, 43 I. C. 489; *Mittoo Lal v. Mt. Chameli*, 1934 A. L. J. 957 = 1934 All. 805.

In *Dyal Singh v. Ramrakha*, 15 I. C. 463, a Full Bench of the Lahore High Court considered the following question. "When it is found in an Appellate Court that the court-fee paid on a plaint or a memorandum of appeal as the case may be, in the court below is insufficient and no dispute as to the amount has arisen and been specifically decided in such lower court, with reference to s. 12 of the Court-Fees Act, what course ought the court of appeal to adopt? Should it accept the action of the lower court in proceeding to try a case as involving a decision of the correctness of the court-fee under the first part of s. 12 and so take action under the second part, or should it hold that it is its duty to refer the matter back for decision of the court which has allowed the case to proceed on insufficient fee; or is any other course the correct one to adopt?" It was answered thus. "When a court of first instance, whose duty it is to see that the court-fee stamps affixed to the plaint are of the correct amount proceeds to the trial of the suit, it must be assumed that the court has decided that the court-fee paid is correct. It is at any rate, a tacit decision and I think, though that point is not before us, that it would not be competent for either of the parties in the appellate court to raise any question as to the amount of fees paid in the first court. But clearly under the second paragraph of s. 12, it would be competent to the first appellate court to call upon a party, whose fee was in deficit in the first court, to make good such deficiency, or if the order were not complied with within the reasonable time to be fixed by the court in accordance with s. 10 paragraph (i) of the Court-Fees Act, to dismiss the claim of the plaintiff should it have been decreed in the first court. Similarly, as regards the court of appeal or further appeal, it will be competent to such court to call upon a party, who had appealed to the lower appellate court after affixing an insufficient court-fee upon his memorandum of appeal to make good such deficiency on a penalty of having any decision in his favour in the lower courts set aside. I think the word "suit" in s. 10 clause (i) of the Court-Fees Act clearly includes appeal and that a similar result in regard to the decision in the first appeal would follow from the action taken in the court of second or further appeal to those which would result as regards the original suit under the orders of the court of first appeal." The answer therefore to the reference was this:—"When it

is found in an appellate court that the court-fee paid on a plaint or a memorandum of appeal, as the case may be, in the court below is insufficient, and no dispute as to the amount has arisen and been specifically decided in such lower court with reference to s. 12 of the Court-Fees Act, it must be held if such lower court has proceeded to the decision of the suit or appeal, that such court had decided under s. 12 (i) of the Court-Fees Act upon the proper court-fee to be levied. Such being the case, provision of s. 12, paragraph (ii) of the Court-Fees Act would apply, and the consequence of the action taken by such superior court would be such as is provided for in s. 10 paragraph (ii) i. e., if the court-fee paid on a memorandum of appeal as in this case, to the first court of appeal is insufficient, it is competent in this court to call upon the appellant in the first court of appeal to make good the deficiency in the court-fee on the memorandum of appeal in that court, and, on his failing to do so, to dismiss the appeal in that court, should the appeal have been decided in his favour, after reasonable time has been allowed to make good such deficiency or in case the appeal in the lower appellate court of the party appealing to this court has been dismissed, to refuse to entertain his appeal to this court until the deficiency is made good, reasonable time being allowed for such purpose, after which, should the deficiency have not been made good, the appeal to this court would stand dismissed." See also *Jani v. Bishen Singh*, 1935 Lah. 698.

**Suit or appeal must come before the court.**—For the adoption of the course prescribed in s. 10 (2) it is necessary that the suit should have come before the court, which evidently means that the appeal should have been registered; because not till then can it properly be said that the suit has come before the court. This of course is mandatory and the power conferred by this provision of the law may be exercised at any time so long as the suit remains before the court in appeal. *Bidhu Bhusan Bakshi v. Kalchand Roy*, 1927 Cal. 775 = 106 I. C. 335.

"Until the appeal was admitted it was not competent to the Judge to pass any order dismissing the original suit", for non-payment of proper court-fee. *Puthia Vittil Govinda Nambi v. Puthia Vittil Parameshwar*, 1 M. L. J. 528.

**Powers of Appellate Court where the suit was beyond the jurisdiction of the first court.**—Where the pecuniary value of the suit was beyond the jurisdiction of the court of first instance but the appellate court decides to proceed with the appeal as though there had been no defect of jurisdiction under s. 11 of the Suits Valuation Act, it can still order payment of the deficit court-fee under s. 12 of the Court-Fees Act. Though the same valuation of the subject-matter may be utilised both for assessing the court-fee and for purposes of jurisdiction, the two matters are quite distinct, and provisions with regard to the one should not be confused with those relating to the other. Because there is a provision of law rendering it un-

necessary to order a re-trial where no prejudice has been proved, that is no reason why the correct fee upon the value of the subject of the litigation should be foregone. *Moiden Kani v. Nagoor Meera* and *Nagoor Meera v. Moiden Kani*, C. R. P. Nos. 866 and 1684 of 1932 decided on 19-1-1934 (unreported).

**Reference.**—It is provided in s. 113, C. P. C. that subject to such conditions or limitations as may be prescribed, any court may state a case and refer the same for the opinion of the High Court and the High Court may make such order thereon as it thinks fit.

**Revision.**—See s. 115, C. P. C. which runs as follows:—"The High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears:—

(a) to have exercised a jurisdiction not vested in it by law or,

(b) to have failed to exercise a jurisdiction so vested or,

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order as it thinks fit.

**The appellate Court to take action only when it considers the decision of the lower court erroneous.**—It is not quite clear in what cases the appellate court can interfere with a wrong decision of the lower court. Clause (1) of the section provides that every question relating to valuation for the purpose of determining the amount of any fee chargeable, etc., shall be decided by the court. This has been judicially interpreted as meaning only the determination of valuation of the subject-matter in a suit and not the determination of the category under which the said subject-matter may fall. Now clause 2 says that when such a suit comes before an appellate court and the latter court considers that the said question has been wrongly decided, it can take action in the manner provided therein. The words "said question" refers to the question set out in clause 1, which has been interpreted as set out above. Therefore it follows that an appellate court can reopen and redetermine a question relating to valuation only where the actual value of the subject-matter has been wrongly decided but not in cases where the lower court erred in applying the wrong provision of the Court-Fees Act in determining the value of the subject-matter, in short where there is a wrong determination regarding the category. This is an obviously absurd result. Equally so it should be that if the lower court committed an error of collecting a fixed fee which is the same irrespective of the valuation of subject-matter, the appellate court should be considered incompetent to revise the finding of the lower court. So also will be the case where in a multifarious suit coming under s. 17, the court erroneously collected court-fee on the aggregate value of the reliefs or on the higher of the two alternative reliefs claimed in the plaint. Therefore what section 12 says is only this. The determination of the question

of the valuation of the subject-matter of the suit by the trial court is final between the parties, but this can be reopened by an appellate court if the decision is not only wrong but is also to the detriment of revenue. The case of other wrong decisions by trial court is not touched by s. 12 and there is no finality in such cases of the findings of the trial court nor could the powers of the appellate court to sit in judgment over the findings of the trial court be doubted. But the real difficulty arises from the absence of any provision for the realisation of deficit court-fee in such cases. It is only in s. 12 of the Court-Fees Act is found this provision for collection of deficit court-fee and in cases not covered by s. 12, there is no provision of law under which the deficit court-fee payable in the lower court and detected by the appellate court can be realised.

**Powers of the Taxing Officer.**—It is the *court of appeal* and in the case of High Court, the *court itself* as distinguished from the Taxing Officer thereof that must consider the decision of the lower court erroneous.

The fees mentioned in the first clause of s. 12 are those payable on a plaint or memorandum of appeal in the subordinate courts and the section does not impose on the High Court, as distinguished from the Taxing Officer and the Taxing Judge, the duty of deciding the questions relating to valuation for the purpose of determining the amount of the fee chargeable in the High Court on a memorandum of appeal.

The High Court may undoubtedly, under the second clause of s. 12 require a party to pay an additional fee upon the plaint or memorandum of appeal in the lower court and this power is conferred on the court itself as distinguished from the Taxing Officer whose powers are confined under s. 5 to the fees payable in the High Court, *Per Dawson Miller, C. J. in Krishna Mohan v. Raghunanda*, 4 Pat. 336 at p. 352; see also *Gajendra Nath Saha v. Sulochana*, 39 C. W. N. 131; *Mithoo Lal v. Mt. Chamell*, 1934 A. L. J. 957 = 1934 All. 805.

"A Taxing Officer would be exceeding his powers were he to take upon himself to decide the very question on which the appellant by the memorandum of appeal seeks for a judicial decision of the court after argument on both sides. He would be virtually usurping the powers of the court and would be in reality assuming himself the appellate powers over subordinate Judges." *Raghunath v. Ganghadhar*, 10 Bom. 60 at p. 61. But in *Bahal Kuar v. Narain Singh*, 22 A. L. J. 1038, it was held that the power of the court to decide disputed questions of court-fee is vested in the Taxing Officer, under s. 5 of the Court-Fees Act, subject to his power to refer the matter to the Taxing Judge when a question of general importance arises. This authority extends to all such questions arising in the High Court whether the deficiency alleged is on the memorandum of appeal in the court or on a plaint or memorandum of appeal filed in the court below. It is however submitted that this decision of a single



Judge is not good authority in view of the recent Bench decision of the same Court in 1934 A. L. J. 957 cited *supra*, which dissents from this decision and is itself based on some other Bench decisions of the Court. See also under s. 5 on the point. In the decision in 49 M. L. J. 608, *In re Lakshmi Ammal*, it was observed as follows :—  
 “The Taxing Officer of this court held that the court-fee paid was insufficient and that the court-fee on Rs. 2,300 should be paid on the ground that the substantial relief asked for by the plaintiff was the cancellation of the sale deed. The appellant paid in the additional court-fee. The Taxing Officer further demanded the difference between the court-fee paid by her in the City Civil Court and the court-fee payable by her according to his view” and the view of the Taxing Officer was upheld.

**The two conflicting views considered.**—It is noticeable that the question as to whether the right of deciding the adequacy or otherwise of the court-fee paid in the court below, vests in the Taxing Officer or the High Court was not argued at all in the Madras decision quoted above, the only point argued before the High Court was that there was no *decision* by the lower court on a question of court-fees and that the plaint was simply admitted by the Sheristadar of the City Civil Court. It was urged that there was no controversy in the court below and that there was no specific issue or decision. The point that the Taxing Officer of the High Court should not himself decide the question of the adequacy or otherwise of the fees paid in the lower court, as his powers derived under s. 5 of the Court-Fees Act apply only to the fees payable in the High Court and as s. 12 (ii) vests the power of considering the correctness of the lower court's decision in the appellate court itself as distinguished from the Taxing Officer was not argued at all. Consequently this decision could not be taken to negative the view that it is the court as contradistinguished from the Taxing Officer that should decide the question. *Firstly* in s. 12 it is clearly stated that the *court* shall decide the question and *secondly* the reference to the Taxing Officer could only be with reference to any fee payable under Chapter II (see s. 5) and that does not include the fee payable in the lower court. It is therefore submitted that the correct view is that the power granted under s. 12 (ii) vests only in the court and not in the Taxing Officer.

**The decision must have been to the detriment of revenue.**—The interference of the court of appeal will be warranted not in all cases of collection of incorrect court-fee but where the fee collected is below the proper fee leviable and thereby to the detriment of public revenue. This is a safeguard from the fiscal point of view. *Peary Shah v. Surajmal*, 16 I. C. 575; *Tekana Kavandan v. Alagiri Kavandan*, 25 I. C. 506. See also *Ladli Begum v. Ramdas*, 90 I. C. 321 (Pat.); 6 B. 302; 15 B. 82. An ingenious argument was advanced in the following case. The lower court gave a decision as to court-fees but the party who

was directed to pay, did not pay it. In appeal, the appellate court tried to realise the court fee in the payment of which default was made. It was contended that s. 12 by its terms was inapplicable. The question of valuation has not been wrongly decided by the trial court, and though there had been a detriment of the revenue, it is attributable, not to an erroneous decision of the court upon the question of valuation but to the failure of the plaintiff to carry out the direction of the court. The court held the Act should be so construed as not to permit a chance of escape and a means of evasion and rejected the plea. *Rajarajeswari v. Gati Krishna*, 1924 Cal. 953.

### Realisation of deficit court-fee.

1. **The suit or appeal must be pending before the court.**—The court has no jurisdiction before the plaint or appeal is filed and after the same is disposed of. Once the suit or appeal is disposed of, the court becomes *functus officio* to deal with it in the matter of the realisation of the deficit court-fee. And no order can be passed directing the stoppage of the preparation of the decree or calling upon the parties to pay the deficit. After judgment is pronounced, the decree must follow under s. 33 and O. 20 rr. 6 and 7 C. P. C., and the court has no power to direct that the preparation of the decree be stopped until the payment of the deficit fee. S. 28 of the Court-Fees Act does not empower the court to call upon the parties to pay the deficit after judgment has been pronounced *Kedar Nath v. Chandra Mauleshwar*, 11 Pat. 532. After the suit is decided, the court is no longer seized of the case and has no jurisdiction to require the plaintiff to make good the alleged deficiency in court-fee. *Mt. Durga Devi v. Mt. Parbati*, 141 I. C. 175 = 1933 Lah. 208, following 82 I. C. 588 and *Jatra Mohan Sen v. Secretary of State*, 46 C. 520 = 52 I. C. 435; see also 152 I. C. 799, cited under s. 10. The court has no power, after the appeal has been disposed of to recover the deficient court fee on the memorandum of objections. *In re Secretary of State for India represented by Collector of Coimbatore*, 142 I. C. 25 = 1933 Mad. 321 (In this case, the previous case law on the point has been reviewed). In *Raja Dev Narain Singh v. Ramil Singh*, 5 P. L. J. 508, it was held that when an appeal has been dismissed by the High Court, under O. XLI, r. 11 of the Code of Civil Procedure, 1908, the court has no power to recover from the respondent who was appellant in the court below, the deficiency in court-fee due on the memorandum of appeal filed by him in that court. In this case the second appeal was dismissed under O. XLI, r. 11 of the Code of Civil Procedure. The respondent before the High Court who was the appellant before the court of first appeal did not pay the full court-fee payable upon his memorandum of appeal in that court. If a decree had been made in his favour in second appeal it would have been perhaps on the authority of *Narain Singh v. Chaturbuj Singh*, competent to the High Court to refrain from signing its decree till the deficit had been paid by the respondent. Their Lordships observed thus:—"The inherent powers of the court would, we think, cover

such a procedure ; but no decree having been made in the respondent's favour by this court and no decree having been prepared, it does not seem that it is possible to take any coercive action against the respondent for the purpose of recovering the deficit court-fee. The proper course whenever it is intended to recover deficit fee from a respondent before the court in respect of something due in a lower court appears to be to admit the appeal for hearing and to take action under s. 12 read with s. 10 of the Court-Fees Act. The court is then in full seisin of the case and can punish the defaulting plaintiff or appellant as the case may be by the dismissal of his suit or appeal. The learned Judge of the Allahabad High Court in *Narain Singh's case* did not express any opinion on the point whether the respondent could be coerced in this manner for his laches in the court below but in our opinion s. 10 of the Court-Fees Act would apply to such a case. In the cases now before us, the appeals having been dismissed under O. XLI, r. 11, of the Civil Procedure Code, we can take no such action till the order of dismissal is reviewed and the appeals admitted for hearing."

In another case the District Judge after dismissing the plaintiff's appeal proceeded to order him to make up a deficiency which he discovered in the court-fee in the appeal. It was held that he had no power to do this and having dismissed the appeal he was *functus officio*. See *Jagha Mohan Sen v. Secretary of State*, 46 C. 520 = 52 I. C. 435. See also *Shanghai Life Insurance Co. v. Helen Constance Brown*, 32 I. C. 534 ; *Radhika Raman v. Hanki Kuer*, 51 I. C. 756 ; *Abdulla v. Secretary of State for India*, 82 I. C. 588 = 1925 Lah. 131.

Where after dismissal of a suit, the court ordered the deficit court-fee to be paid by the plaintiff, and on his default, of its own motion ordered the attachment of his moveables, it was held that the court had no jurisdiction to do so. *Jatra Mohan Sen v. Secretary of State*, 46 C. 520. The order is also assailable on the ground that the only procedure in cases of non-compliance with the order of the court regarding the payment of deficit court-fee is that set out in s. 10, Cl. 2 of the Court-Fees Act and it does not empower the court to issue process for the realisation of the amount from the person or property of the defaulter. See *Walaiti Ram v. Gopi Ram*, 152 I. C. 799 (Order was for deducting amount of deficit court-fee from amount deposited in court under s. 22 of the Punjab Pre-emption Act.) See also the decision in *Mahomed Ismail v. Liyaquat Husain*, 140 I. C. 191 = 1932 A. L. J. 165 = 1932 All. 316, holding that there is no provision in the Court-Fees Act which justifies a process of attachment for recovery of court-fees after the court finally parts with seisin of a case.

**2. (a) Where the court-fee paid on the plaint is deficient.**—Where the trial court finds that the court-fee paid on the plaint is deficient then it is bound under the provisions of O. 7, r. 11 of the Civil Procedure Code to grant time for making up the deficit.

(b) **When the court-fee on the memorandum of appeal is deficient.**—The question of the sufficiency of the stamp on the memorandum of appeal should always be regarded as open until the appeal is finally heard and disposed of. This view applies to Courts subordinate to the High Court and to the High Court when considering the question of the sufficiency of the stamp in the court below under the second part of s. 12. But it is doubtful whether the first part of s. 12 can be held to empower the Bench of the High Court hearing the appeal to reject a memorandum as insufficiently stamped in view of the remarks of Sir Dawson Miller in *Krishna Mohan Singh v. Raghunandan Pandey*, 4 Pat. 336=87 I. C. 137=1925 Pat. 392 (F. B.), where he expressed the opinion that the power of the High Court to decide the amount of the fee payable on a memorandum of appeal presented to the High Court has been delegated to the Taxing Officer and the Taxing Judge. *Sideshwari Prosad v. Ram Kumar Rai*, 12 Pat. 694=144 I. C. 684=1933 Pat. 234. If the appellate court finds that the memorandum of appeal is not so properly stamped, then the approved view is that there is no invariable rule that the appellant should be given time to make good the deficit and that time will be given only in cases where there was a *bona fide* mistake by the party and not due to wilful default. A distinction thereby is sought to be drawn between a plaint and a memorandum of appeal and the approved view on a comparison of the language of s. 149 and O. 7, r. 11 of the Civil Procedure Code (for detailed discussion of the several views, see commentaries under s. 6 *supra*) is that the discretion to grant time need not necessarily be exercised in the case of appeals as in the case of the plaints.

**Bombay.**—In *Achuta Ramachandra v. Nagappa*, 38 Bom. 41, a memorandum of appeal was presented on the last date of limitation with a half a rupee stamp instead of the requisite court-fee of Rs. 205. The explanation offered was that the party had no funds. The court refused to grant time and rejected the appeal. Batchelor, J., thought that a memorandum of appeal stood on the same footing, as a plaint. "Section 107 sub-s. 2 of the Code, which reproduces s. 582 of the old Code, provides that the appellate court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Code on the courts of original jurisdiction in respect of suits instituted therein. Moreover, unless the authority to reject such a memorandum of appeal as this is referred to O. 7, r. 11 (c), there is not, so far as we are aware, any authority to which such action of the court could be referred. Then it is urged that this view of the law is in conflict with s. 149 of Civil Procedure Code and that the court could extend the time for the payment of fees on any documents which may be presented to it. But when a particular document is a plaint or a memorandum of appeal, then the court's discretion must be exercised in accordance with the special provisions of O. 7, r. 11 (c). Thereafter s. 149 would come into play and would operate to produce this effect, that upon the payment

of the requisite fee within the time allowed by the court, the document in respect of which such fee is payable would have the same force and effect as if such fee had been paid in the first instance. The learned judge below in considering s. 149 observed that it was intended solely for the purpose of enabling the court to deal equitably with any *bona fide* misconstruction of the law as to valuation. We are of opinion, however, that this is not the correct interpretation of s. 149. First there are no words in the section to countenance or warrant such a limited construction of it. Then the section as it stands is a section which in the new code was substituted for s. 582-A of the old Code. Section 582-A was apparently enacted with a view to remove what was considered to be the hardship caused by certain decisions of the Allahabad High Court, and that section provided for the validation of insufficiently stamped memorandum of appeal provided that they have been presented within the proper period of limitation and "the insufficiency of the stamp was caused by a mistake on the part of the appellant as to the amount of the requisite stamp." Under s. 582-A therefore, the discretion of the court was fettered by this limitation that the insufficiently stamped memorandum of appeal could not be validated unless the judge was satisfied that the insufficiency arose from the mistake on the part of the appellant. *Turning now to s. 149 of the present Code, it will be seen that these words of limitation are omitted from it, and the inference appears to be that the legislature by the new provision intended that the court should have a free and unshackled discretion in this matter.* There seems, therefore, to be no ground for the learned judge's view that the concession referred to in s. 149 must be restricted to cases where there was a *bona fide* misunderstanding of the law as to valuation.

**Madras.**—In *Narayana v. Venkatakrishna*, 27 M.L.J. 627=26 I. C. 33, "the appellant under O. 44, C.P.C., presented an application for leave to prosecute his appeal in *forma pauperis* accompanied by a memorandum of appeal as required by the Order. The application for leave was two months out of time and was filed on the last date allowed for filing the appeal. Eight days later the court returned the application and the memorandum on the ground that the application was out of time and gave a couple of days' time to explain the delay. Two days' later, the appellant again presented the appeal with the full court-fee and applied under s. 149 that the delay should be excused." In the case of *plaints insufficiently stamped*, under O. 7, r. 11 (s. 54 of the old Code) the court is bound to give a few days to pay the correct fee. Delay could be excused if the insufficiency was caused by a mistake as to the amount of the requisite stamp. But under s. 149 it is now left to the discretion of the court. "With respect we are not satisfied as to the correctness of the ruling in *Achuta Ramachandra v. Nagappa*, 38 Bom. 41, that under the present Code O. 7, r. 11 is rendered applicable to memoranda of appeals by s. 148 so as to make it incumbent upon us to admit memoranda out of time where the conditions of the rule are complied with. In the present case, we are

not prepared to differ from the exercise of the judge's discretion in admitting the appeal."

**Patna.**—In *Ramshay v. Kumarlakshminarayan*, 3 P. L. J. 74 = 42 I. C. 675, the appeal was presented on the last day of limitation with an insufficient court-fee and the reason stated was that "it is the practice of the courts in such cases to receive the appeal and to allow time to make good the deficiency." The learned judges observed "S. 4 of the Court-Fees Act, 1870, forbids the High Court to receive a memorandum of appeal unless the proper court-fee is paid. Section 6 contains a similar provision with regard to other courts. Section 28 of the same Act, which obviously does not apply to the cases now before us, make provision for stamping a document, which has, through mistake or inadvertence been received, filed or used by a court though unstamped or insufficiently stamped. Section 149 of the Code of Civil Procedure provides that where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, the court may in its discretion at any stage allow the person by whom such fee is payable to pay the whole or part as the case may be, of such court-fees, and upon such payment, the document in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance. It has been held that in the case of the plaint insufficiently stamped the court is bound under O. 7, r. 11, (s. 54 of the Code of 1882) to give the plaintiff time to make good the deficiency. *I doubt whether the legislature intended that time should be given as a matter of course even where the plaintiff has deliberately and without any excuse paid an insufficient court fee*, but it is too late to question the rulings on this point. Some courts held that s. 54 of the Code of 1882 was by s. 582 of the Code made applicable to an appeal. The contrary view was expressed by the Full Bench in *Balkaran Rai v. Govindanath Tiwari*, 12 All. 129, and a new s. 582 A was then added to that Code. Section 149 of the present Code takes the place of s. 582-A of the Code of 1882 and vests a very wide discretion in the court, but in my opinion s. 149 should not be construed in such a way as to nullify the express provisions of s. 4 of the Court-Fees Act. When the amount of the court-fee payable is open to doubt, or the amount of the fee cannot be ascertained by the court till the record is received, or it appears that the appellant has made an honest attempt to comply with the law, the court may properly receive the appeal and allow time for the deficiency, if any, to be made good. In the cases before us, the appellants have deliberately, and to suit their own convenience, paid on their appeals insufficient court-fee, in fact they have paid only a small fraction of the fees which they admit are payable by them. In such cases, the court is not in my opinion, bound to receive the appeal and give the appellant time to make good the deficiency. Assuming that the court has power to receive these appeals, and allow time for the deficiency to be made good, I think we should be exercising our discretion in an unreasonable manner if we were to do so."

**Rejection of plaint or dismissal of suit.**—Where the trial court finds that the proper court-fee is not paid even within the time granted to the party for payment thereof then it is provided in s. 10 (ii) of the Court-Fees Act that the suit shall be *dismissed*. It is interesting to contrast with that the words used in the Code of Civil Procedure, where O. 7, r. 11 provides that the plaint shall be rejected. That there is a radical difference between rejecting a plaint and dismissing a suit will be apparent from O. 7, r. 13. A fresh suit can be brought on the same cause of action after the rejection of a plaint but that could not be done where the suit is dismissed. It is really unfortunate that in respect of the same contingency, *viz.*, the non-payment of deficit court-fee, there should be two different mandatory provisions *viz.*, that of rejection of plaint and the dismissal of the suit in the C. P. C. and the Court-Fees Act. This is another instance of the lack of co ordination between these two statutes, some instances of which have already been noticed and will be noticed hereafter. It may be observed, however, that the prevailing practice is that the courts pursue the procedure less onerous to the party, *viz.*, that of the rejection of the plaint and not the dismissal of the suit. In an Allahabad case where the plaintiff who was called upon to make good a deficiency in the court-fee made an application to the court to permit her to withdraw the suit with liberty to sue again, it was held that no such order could be made on the basis of an insufficiently stamped plaint, which was liable to be rejected. *Ashghari Begam v. Fasihuddin*, 152 I. C. 816=1934 A. L. J. 820=1934 All. 989.

**Procedure.**—Where the appellate court finds that the proper fee has not been paid in the lower court it is provided in s. 12 that the procedure laid down in s. 10 (2) should be followed. That is:—

- (a) The court shall fix a time for payment of the deficit fee;
- (b) The suit shall be stayed until the additional fee is paid;
- (c) If the deficit is not made good within the time fixed the suit shall be dismissed.

It need hardly be observed that the procedure cannot be followed literally. Suppose the High Court in Second Appeal finds that the proper fee has not been paid in the first appellate court. The suit shall be dismissed. That means that the 'appeal' must be dismissed. Again suppose the defendant is the appellant in the first appellate court and is again the respondent in second appeal and the High Court finds that the proper court-fee has not been paid by the plaintiff in the first court. Then the direction that the 'suit shall be dismissed' must mean the suit and not the appeal. If both the plaintiff in the first court and the defendant appellant in the first appeal have been found to have not paid the proper fee, the question is, whether it is the suit that must be dismissed or the appeal. Obviously it will be meaningless to dismiss both, though the suit beir

dismissed, the appeal automatically lapses. Another difficulty may arise in the following case. The plaintiff defaults in paying the proper fee but gets a decree. The defendant appeals and the appellate court holds that the proper fee has not been paid in the lower court. Section 10 (ii) says that the suit shall be stayed. It cannot be construed literally as there is no *suit* to be stayed. Nor does it appear to be proper to stay the appeal for the party aggrieved by the decree who seeks to vacate it being the appellant, it is he, who is prejudiced by the stay of appeal, while the defaulter is the plaintiff respondent. But there is no good in proceeding with the hearing of the appeal on the merits until the plaintiff respondent makes good the deficiency due on his plaint. In the event of his making default in such payment, his suit may have to be dismissed under s. 10 (2), having the same effect as appeal being allowed. The only way perhaps for the procedure laid down to be adhered to, without prejudice to the defendant appellant is while staying the hearing of the appeal also at the same time stay execution of the decree of the lower court. In *Rowlins v. Luchmi Narain*, 3 Pat. L. J. 443, the court has held that where the plaintiff respondent has failed to pay the proper fee in the court below, no decree shall be executed in his favour until the deficiency is made good. But what is to happen if the decree has already been executed by the decree-holder plaintiff so that any postponement of the hearing of the appeal is prejudicial to the defendant appellant rather than to the defaulter the plaintiff respondent? It is submitted that there is no way out of the difficulty except to minimise the hardship by staying the hearing of the appeal to the shortest possible period. S. 10 (2) authorises the court to dismiss the suit of the plaintiff-respondent if the additional fee is not paid within the time fixed. That has the effect of allowing the appeal and the defendant will be enabled to proceed by way of restitution. But in Bengal by virtue of the Amending Act of 1935, it appears that the court cannot dismiss the suit but can recover the deficit as a public demand. Some of these and similar difficulties are sought to be solved in the decisions set out hereunder. The noticeable feature is that courts being conscious of the defective nature of s. 12 have fallen back on occasions on their inherent jurisdiction holding that s. 12 is not exhaustive and that their powers to rectify mistakes or do justice is not confined to the actual wording of the section. Various methods are suggested *viz.*, to refuse to hear counsel, to stay the signing of the decree, to refuse to issue the decree etc., thereby putting pressure on the defaulting party taking the view as expressed in *Baijanath v. Dhani Ram*, 117 I. C. 107-1929 All. 571, that it is open to the courts to take all lawful means for the collection of the court-fee and the carrying out of its own orders.

**Default by respondent—Issue of decree to be stayed.—**

Where it was discovered in second appeal in the High Court that the respondent when appellant in the lower appellate court has not paid sufficient court-fee on his memorandum of appeal in that court



and up to the date of the hearing of the appeal in the High Court, had not made good the deficiency though called upon to do so, it was held that the proper procedure was not to dismiss the respondent's appeal to the lower appellate court, but to stay the issue of the decree, if any, of the High Court, in favour of the respondent, until such time as the additional court-fee due by him might be paid. It was observed as follows:—"The question that arises in the present case is what is the suit which is to be stayed until the additional fee is paid? It is to be noted that the staying of the suit is the act which the court has to perform before it can dismiss the suit. There is no suit before me except in the sense that all proceedings in a suit up to decree are parts of the suit. What is before me is the appeal by the plaintiff against the decree of the lower appellate court dismissing the suit. The appellant is undoubtedly no way in default. He has paid up all the court-fees due from him in the lower courts and in this court. Does then the second clause of s. 12, read with paragraph 2 of s. 10 mean that if the respondent wilfully persists in refusing to pay, the appellant, who is not in fault, is to be punished by having his appeal dismissed? I cannot believe that it was intended by the legislature to work any such injustice. In my opinion the second clause of s. 10 read along with the second clause of s. 12 cannot be worked in a case like the present. If it were the appellant who was in fault and failed to pay the full court-fee due from him in the lower court, this court certainly could stay the hearing of his appeal, and if the deficient fees were not paid, could dismiss his appeal and no doubt would do so. But where the appellant is not in fault, it would be most unjust that the respondent by failing to pay the court-fee due from him in the lower court should have it in his power to prevent the appellant from having his appeal heard. For these reasons, I decline in this case to take action under the second clause of s. 10 and proceed to hear the appeal on the merits. Therefore the appeal is dismissed. But I direct that the decree be not prepared or signed until the respondent pays the court-fees found due from him on his memorandum of appeal in the lower appellate court." *Narain Singh and others v. Chaturbhuj Singh* 20 All. 362; *Mohon Lal v. Nand Krishan*, 28 A. 270 F. B.

**Bengal Amendment.**—The procedure to be followed in cases of detection of deficit court-fee paid in the lower court by the appellate court is laid down clearly in section 12 that has been entirely recast by the Bengal Court-Fees Amendment Act, 1935. There it is laid down that if the defaulting party, i. e., the party who had paid deficit court-fee in the lower court happens to be the appellant, the court shall fix a time for the payment of the deficit court-fee and stay the hearing of the appeal till such fee is paid or security is given to the satisfaction of the court, failing compliance with which the appeal shall be dismissed. It is not quite clear from the section as to whether the suit is to stand dismissed. Even though the plaintiff may be the appellant the subject-matter of the appeal may not be the same as the

subject-matter of the suit, and consequently dismissal of an appeal is not tantamount to a dismissal of suit in all cases where the appellant is the plaintiff. It is for consideration therefore whether under the Bengal s. 12 both the appeal and the suit are expected to be dismissed. But this is not clearly brought out. If the appellant is the defendant and the respondent has not paid the proper court-fee on the plaint in the lower court, then it is provided that the procedure indicated above should be followed as far as it would apply with this difference that if the party bound to pay defaults, the suit is not to be dismissed but the amount of the deficit is to be collected from the defaulting party as a public demand. It may be observed that this is quite an innovation. The accepted principle hitherto was that no party could be pursued and deficit court-fee if any collected from him after the termination of the litigation. The levy of court-fee is different from that of stamp duty in this respect. The utmost sanction against the defaulting party is refusal to hear his case and dismiss a suit or an appeal as the case may be. This provision which enables the Crown to proceed against a litigant for arrears of court-fee after the litigation is over and courts have lost jurisdiction, is quite a new principle in the law of court-fees. It is for consideration that once this principle is accepted, what logical extensions thereof may not be possible and whether it may not work a hardship in at least some cases where a plaintiff might perhaps have elected not to pursue a suit if he was directed to pay a particular amount of court-fee.

**Conditional decree not to be passed.**—"As plaintiff did not pay the deficient court-fees as soon as the first issue was decided against him, the subordinate judge should have held that the suit had been properly dismissed. The District Munsiff ought to have called upon the plaintiff to pay the deficient court-fee; as he failed to do so, the subordinate judge was not in error in entertaining the appeal and dealing with it; but he should have passed no decree until the fees due had been paid and if they were not paid he should have dismissed the suit. \* \* We have to observe, however, that *the court-fee should have been collected before the passing of the decree* and the decree is clearly irregular in directing that in default of payment of the fees, the prayer for possession alone would be disallowed instead of saying that the suit would stand dismissed." *Krishnaswami v. Sundarappier*, 18 M. 415.

**Where a second appeal was dismissed under O. 41, r. 11, C. P. C.**—Such a case arose in *Rajdeo Narain Singh v. Ramdil Singh*, 58 I. C. 271=5 P. L. J. 508. It was held as follows:—"Wherever it is intended to recover deficit court-fee from a respondent before the High Court in respect of something due in a lower court, the proper course is to admit the appeal for hearing, and to take action under s. 12, read with s. 10 of the Court-Fees Act. The court is then in full seisin of the case, and can punish the defaulting plaintiff or appellant as the case may be, by the dismissal

of his suit or appeal. Where, however, the appeal before the High Court is dismissed under O. 41, r. 11 of the C. P. C., no such action can be taken till the order of dismissal is reviewed and the appeal is admitted for hearing."

**Where the party is guilty of contempt of court.**—*Raja Rajeswar Jin and others v. Gathi Krishna Chakravarthi and others*, 1924 Cal. 953, was a suit for possession and mesne profits. It was under-valued, but the court tried the suit on merits on the plaintiff's undertaking that he would pay up before the decree is drawn up. The suit was dismissed, and the plaintiff did not pay the deficit court-fee. He however appealed against the decree so far as the costs were concerned. It was held that the plaintiff being in contempt could not appeal. "The provisions of s. 12, should be strictly construed and additional fee should be levied from a party litigant only in exact conformity with the precise words of the statute, although provisions in fiscal statutes should not be so construed as to furnish a chance of escape and a means of evasion. A breach of an undertaking given to a court by a litigant pending proceedings, on the faith of which the court sanctions a particular course of action, or inaction is misconduct amounting to contempt. When a person is guilty of such contempt he places himself in a perilous situation so as not to be heard by the court, till he has purged his contempt \* \* A litigant in contempt has no standing in court."

"Where it is found in appeal that the court fee paid by the plaintiff-respondent in the court of first instance was deficient and the respondent when called upon to make up the deficiency fails to do so, the court of appeal can realise the deficiency of court-fee by such lawful means as might be open to it and one of the ways by which such payment can be enforced is not to hear the counsel for the respondent who is in contempt till the deficiency is paid. In *Mohan Lal v. Nand Kishore*, 28 A. 270, the question was whether the respondent who had failed to make good the deficiency should have the appeal before the lower appellate court (which had succeeded), dismissed or whether there was some other remedy to compel him to make good the deficiency. All that the learned judges said, was that the procedure of dismissing the respondent's appeal before the lower appellate Court was not the right procedure and that the proper thing to do would be to stay issuing the decree in favour of the respondent if such should be passed, until such time as the additional court-fee due by him may be paid. As we read the judgment the learned judges, never indicated that this was the only way of bringing pressure on the respondent to make good the deficiency for the Court-Fees Act does not provide any means by which the deficiency in court-fees can be realised. The courts have always taken it upon themselves to realise it by such lawful means as might be open to them. One such means is not to hear the counsel of the defaulting party, which in this case was the respondent in Second Appeal." *Baijanath v. Thaniram*, 117 I. C. 107=1929 All. 571; see also *Krishna Mohan v. Raghunandan Panday*, 4 P. 336.

**Jurisdiction of appellate court to act under clause 2 where only one defendant appeals.**—The plaintiff sued four persons to recover arrears of rent, and three parcels of land demised to the Karnavan of defendants Nos. 1 and 2. The District Munsiff passed a decree for the plaintiff, against which defendant No. 4 who asserted a jenmi right over part of the land in question preferred an appeal. In that appeal, the District Judge considering that the suit had been improperly valued, made an order requiring the plaintiff to pay additional fee, on non-payment of which the suit was dismissed.

"The order of the District Judge in dismissing the suit for failure of plaintiff to pay additional stamp duty demanded was irregular for the following among other grounds. In the first place he had no jurisdiction over the whole subject-matter of the suit, the appeal by 4th defendant, relating to one item only. Secondly the appeal had not been admitted when the order was passed, and therefore the matter was not before the judge in such a shape that he had jurisdiction to make any order." *Kerela Verma v. Chadayan Kutti*, 15 M. 181.

**Procedure where both the parties to the appeal have to pay deficit court-fee.**—Where a plaint is not properly stamped and a decree is given in plaintiff's favour and objection is taken in appeal, the appellant should be made to pay the proper court-fee before the respondent is called upon to pay the deficient stamp duty payable in the court of the first instance. *Gungadhara Ayyar v. Veta Chetty*, 14 M. L. J. 144.

**Written statements pleading a set-off should be treated as a plaint.**—O. 8, r. 5, C. P. C., provides that where in a suit for the recovery of money the defendant claims to set off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff not exceeding the pecuniary limits of the jurisdiction of the court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant may at the first hearing of the suit but not afterwards unless permitted by the court, present a written statement containing the particulars of the debt sought to be set off. And it is further provided that the *written statement shall have the same effect as a plaint in a cross suit.*

**Court-fee should be paid for set off.**—In *Chennappa v. Raghunathan*, 15 M. 29 it was held that the written statement should be regarded as a plaint in regard to the set off and should be stamped accordingly. "It is open to the District Judge under s. 12 of the Court-Fees Act to direct the defendant to pay the court-fees on his written statement before the set off could be allowed." *Maniklal Vadilal v. Chandulal Balabhal*, 94 I. C. 646=28 B. L. R. 525=1926 Bom. 343.

**Where the plea of set off is allowed by lower court, without collection of fee.**—When a document is admitted by the

lower court it is not for the plaintiff to say that the document should be struck off the record. The court is entitled to allow the defendant on payment of the proper fee to rely upon the set off. *Maniklal Vadilal v. Chandu Lal*, 28 B. L. R. 525 = 1926 Bom. 343.

**Where set off is pleaded and no fee paid or question of set off considered.**—Where a written statement pleads a set off and it does not bear *ad valorem* court-fee on the amount of set off, the court is debarred from going into the question of set off. An appellate court cannot make an order for payment of additional court-fee where no fee at all has been paid and where the original court has not decided the question of valuation. *Muthu Erulappa Pillay v. Kunku Muthia Maistry*, 36 I. C. 957.

**Cross Objections.**—In *Husan Bano v. Nizamuddin*, 13 A.W.N. 85, it was held that the section is not applicable to the case of cross objections. This situation could not arise in Madras and Bengal where it is enacted that a memorandum of appeal includes a memorandum of cross objections.

13. If an appeal or plaint, which has been rejected by the lower court on any of the grounds mentioned in the Code of Civil Procedure, is ordered to be received, or if a suit is remanded in appeal on any of the grounds mentioned in s. 351, [O. 41, r. 23] of the same Code for a second decision by the lower court, the Appellate Court shall grant to the appellant a certificate, authorising him to receive back from the Collector the full amount of fee paid on the memorandum of appeal :

Provided that if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

#### COMMENTARY.

Sections 13, 14 and 15 deal with particular cases where the whole or a portion of the court-fee paid by a plaintiff, petitioner or appellant is to be refunded. They are based on the principle that where more than the proper court-fee has been collected or where having collected the full fee, the plaint or the memorandum of appeal is wrongly rejected it is but fair that the court-fee paid should be refunded.

**Civil Procedure Code.**—The references in the section to the old code of 1859 should now be taken as referring to the corresponding provisions of the Code of 1908, (See s. 158, C. P. C.) Consequently the words “in the Code of Civil Procedure” must be read as “in the Code of Civil Procedure 1908” and the words “in s. 351” must be read as “in O. XLI, r. 23, in the first schedule.”

**Inherent powers of court.**—Sections 13, 14 and 15 exhaust the provisions in the Court-Fees Act regarding the refund of court-fees paid in the suit or in appeal. But they do not oust the inherent jurisdiction of a court.

Section 151 of the C. P. C. is a new section first enacted in the Code of 1908, whereby there is a saving of the “inherent powers of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.” Of course it is hardly necessary to observe, considering the wide discretion given in the section that courts are to invoke its aid only in cases where there is an imperative necessity for same to remedy manifest injustice and in the absence of any other statutory provision bearing on the case.

It was held in *Chandra Dhari Singh v. Tippiam Prasad Singh*, 3 P. L. J. 452, that the High Court has inherent power to make an order directing the taxing officer to issue the necessary certificate to enable an appellant to apply to the revenue authorities to obtain a refund of any excess court-fee paid on the memorandum of appeal. A court has jurisdiction to order a refund of court-fees in cases which do not fall within any of Ss. 13, 14 or 15. See *Mahammad Sadiq Ali Khan v. Ali Abbas*, 7 Luck. 588=146 I. C. 789=1933 Oudh 170 following 14 W. R. 47; 40 Cal. 365=20 I. C. 498; 7 Rang. 88=117 I. C. 585=1929 Rang. 158; 8 Bom. 313 (F.B.); 35 Mad. 567=10 I. C. 201; 83 I. C. 829=1925 Oudh 39. In *Galstaun v. Raja Janaki Nuth Roy*, 38 C. W. N. 185=152 I. C. 215=1934 Cal. 615, it has been held that s. 13 is not exhaustive and that the High Court may, in suitable cases, exercise its inherent powers vested in it by s. 151, C. P. C. and order refund of court-fees paid.

“Where a plaint or memorandum of appeal is returned as insufficiently stamped the court has *inherent* jurisdiction to order refund of stamp paid.” *Bhuwaneswari v. Kishan Dayal*, 72 I.C. 405.

In a recent Madras case, it has been held that the court can order a refund of court-fees (1) where the Court-Fees Act applies, (2) where there is an excess payment by mistake, and (3) where on account of a mistake of a court a party has been compelled to pay the court-fees either wholly or in part. Outside these cases, it has been held, the court has no authority to direct a refund. Thus where an appeal is withdrawn and consequently dismissed, the appellant is not entitled to apply for a refund of court-fees paid on the memorandum of appeal. In *re Chidambaram Chettiar*, 57 Mad. 1028=67 M.L.J. 321=1934 Mad. 566. In C.M.P. No. 1402 of 1933, decided

on 19-4-1933 (unreported), it was held by the Madras High Court that the court-fee paid on an appeal which was returned for some defect and which was never represented after complying with the requisition of the office and in that stage was withdrawn, could be refunded. The court observed that it had no jurisdiction to refund court-fee after an appeal is filed (*i. e.*, accepted by the office.) Where the plaintiff originally affixed stamps which were not of the correct denominations according to the rules and affixed proper stamps later on, whereon the plaint was duly admitted and registered, the original stamps could not be returned to the plaintiff as they became part of the record, but the court should grant a certificate to the plaintiff stating the facts, which certificate could then be presented to the Collector. *Raoji Bhiosanji Kunbi v. Collector, Amraoti*, 1934 Nag. 263. The Calcutta High Court has recently held that where a memorandum of appeal was not registered as out of time and the delay was due not to any negligence on the part of the plaintiff, but to some gross negligence on the part of his legal adviser, it was a fit case for refund of court-fee. *Galstaun v. Raja Janaki Nath Ray*, 38 C. W. N. 185=152 I. C. 215=1934 Cal. 615.

Then the question arises in what cases courts should exercise their inherent powers and grant refund. The cases in which such refunds are asked for may be roughly classified as follows :—

(a) Cases where excess court-fee has been paid by mistake or inadvertence.

(b) Cases where delay in presentation of appeals is not excused and the appeals are consequently rejected as barred by limitation.

(c) Cases where the appeals are returned for the rectification of some defects and the appellants do not represent them as they desire to withdraw the appeals either because they have been settled out of court or otherwise.

### Class (a).

Taking them in serial order, in cases falling under category (a) it appears that refund may be ordered though there is no provision in the Court-Fees Act, by the Court acting under s. 151 of the code. *Harihar v. Anand*, 40 C. 365; *Dhari Singh v. Tippan Prasad*, 46 I. C. 271=3 Pat. L. J. 452; *Probhas Kumar v. Nithar Lal*, 84 I. C. 278=1924 Cal. 1054; *Miss Hirabai v. Fakir Mahomed*, 102 I. C. 193; *Orr v. Nagappa*, 16 M. L. J. 30; *Muhammed v. Raj Ballanath*, 107 I. C. 320; *Sasi Bhusan v. Manik Lal*, 107 I. C. 825; *Vijaya-lakshmi Ammal v. Srinivasa Ayyangar*, 57 M. 542=66 M. L. J. 35 following *Thammayya Naidu v. Venkataramanamma*, 55 Mad. 641. See also notification of the Govt. of India No. 2025 dated 17th Sept. 1872 regarding refund of the value of court-fee stamps put in by mistake in administrative cases. Whether s. 13 applies or not, an appellate court has jurisdiction to act under s. 151, C. P. C. to order refund of court-fee levied by lower court. *Sasibushan Muzumdar v.*

*Manick Lal Chandra*, 107 I. C. 325 (Pat.) See also *Mst. Deba v. Secretary of State*, 1935 A. L. J. 376 = 1935 All. 455, as to refund of court-fees mistakenly collected by lower court.

### Class (b).

In cases falling under class (b) also refunds have been ordered. See the recent decisions of the Madras High Court in L. P. A. 30 of 1931, C. M. P. No. 1737 of 1932, C. M. P. No. 695 of 1933, C. M. P. No. 4631 of 1933, C. M. P. No. 6231 of 1933 and C. M. P. No. 2351 of 1934. The Calcutta High Court is also of the same view. See 38 C. W. N. 185 cited *supra*. It is submitted that it is only for the sake of convenience court-fees are collected in the shape of stamps under s. 25 of the Court-Fees Act. Section 4 of the Act lays down that no document chargeable with fees shall be *received*, fixed or exhibited in the court unless the proper fee is paid. Therefore even at the outset such insufficiently stamped documents ought not to have been received at all. It is because the receiving clerk in the office could not obviously check and find whether the papers presented are in order, before he receives it into the office, such insufficiently stamped documents happen to be received. For the simple reason that what ought not to have been received has been received by inadvertence, the person presenting the paper ought not to be in a worse position by the document he presents being taken into the office than he will be if the receiving officer refused to take it. The dismissal of a petition to excuse delay in presentation or re-presentation is only tantamount to saying that the presentation is not a proper presentation. If the presentation is not a proper presentation then the appellant or petitioner is entitled as a matter of equity to be relegated to the position he would be in, if the office had declined to receive his insufficiently document even at the outset. It is therefore submitted that in such cases, the appellant is entitled to the refund of court-fee paid by him in the shape of stamps and mutilated by the office. This order could be made by courts by virtue of their inherent powers though it is submitted not by any power under section 151, C. P. C.

### Class (c).

Cases falling under class (c) stand on a different footing altogether. They are cases where after the memorandum of appeal and connected records are returned for rectification of some defects, the appellant does not re-present them, but desires to withdraw the same for several reasons, as inability to pay the proper fee, settlement of claims, etc. In cases where the return is not for any deficiency of court-fee but for the rectification of other defects, and the appellant *chooses* not to proceed with the appeal, it appears that the court-fees could not be refunded. But refunds have been ordered even in such cases in Madras, see C. M. P. Nos. 3292 and 3293 of 1934 (this is a case where the appellant represented that the delay in re-presentation need not be excused); C. M. P. No. 4600 of 1933 (where the appeal was



filed under a mistake); C. M. P. No. 1402 of 1933 (where appeal was withdrawn after return for rectification of defects); C.M.P. No. 2139 of 1934 and C.M.P. No. 864 of 1934 (where the appellant represented he was not able to pay the additional court-fee).

Then the question is what is the procedure to be followed in the matter of refund. In *Thammaya Naidu v. Venkataramanamma*, 55 Mad. 641, which was a case of payment of excess court-fee, Wallace, J., observes at page 645 of the report that "what the High Court really does *judicially* is to decide judicially what is the proper court-fee and then issue a certificate to the party that excess court-fee has been levied. It still lies with the Revenue authorities to decide whether or not they will refund the excess under the circumstances." In *Vijayalakshmi Ammal v. Srinivasa Ayyangar*, 57 M. 542=66 M. L. J. 35, it has been held that in cases not falling under ss. 13, 14 and 15 of the Act, the revenue authorities are not bound to make a refund to the party even if he has obtained a certificate of the court and that in such cases the court has no power to order refund or to give a certificate to say that a party is entitled to it but can only certify that he has paid excess court-fee. In C. M. P. No. 1314 of 1933 Burn, J. (of the Madras High Court) states as follows: "I have no power I am aware of, to order refund in such a case is this." (It was a case where delay in filing a second appeal was not excused). "Let the petitioner have the stamps returned, with a certificate that they have not been used, and he may then apply to the Revenue authorities for refund of the value."

It is therefore submitted that in cases falling under sections 13, 14 and 15 of the Court-Fees Act, the Court can, as it is bound to refund the court-fee, issue a certificate to the party authorising him to receive back from the Collector the full amount of fee paid on the memoranda of appeal, but in other cases where the court acts under its inherent powers it is only a certificate that can be given to the party to the effect that court-fee stamps of specified value have been received and punched in the office and not used. In such cases, it is submitted that, to enable the Revenue authorities to exercise their discretion in the matter, the circumstances under which the certificate is issued will have to be set out.

It need hardly be added that where an appeal was dismissed on the ground that it was not maintainable, the court-fee could not be refunded. *Jagadesh v. Radha*, 6 Pat. 599=105 I. C. 740.

**Alteration of suit making prayer unnecessary.**—Where a prayer becomes unnecessary by virtue of the alteration of a suit for declaration into one for possession, with the permission of the court, no refund of court-fee can be granted in regard to that prayer as it was an appropriate relief at the time when the suit was brought. *Ramakrishnayya v. Seshamma*, 68 M. L. J. 369=1935 Mad. 346.

### Certain specific cases considered.

1. *Compromise of suit*.—Merely because the suit was not tried but was compromised that is no ground for refund of court-fee. *Land Mortgage Bank v. Gregory Paul*, 4 Bom. L. R. App. 96.

2. *Where appeal is dismissed as not maintainable*.—Where the High Court dismisses a second appeal on the ground that no second appeal lay from the decision appealed against, the court-fee paid on the memorandum of appeal cannot be refunded. *Jagadish Coudhury v. Radha Dubay*, 6 Pat. 599 = 1928 Pat. 35.

3. *Where the appeal has been heard*.—Where the appeal was stamped after the period of limitation and counsel argued in support of it, but the appeal was held time barred, no refund could be granted. *Annamalai v. O. M. R. M. Chetty Firm*, 22 I. C. 884. *Mirza Muhammad v. Rajballab Nath*, 107 I. C. 320. But see 38 C. W. N. 185 cited *supra*.

4. *Dismissal for default of payment of deficit court-fee*.—It was held in *Janak Prasad v. Askaran Prasad*, 6 Pat. 602 = 105 I. C. 742 = 1928 Pat. 29, that where the appellant was given time to pay the additional court-fee and on his default the appeal was dismissed, there could be no refund and that further the Registrar has no power to put a party on terms as to payment of court-fee.

5. *Mistake of party*.—Where in a partition suit, the final decree was drawn up on a court-fee stamp instead of on a non-judicial stamp as it ought to be, the plaintiff is not entitled to a refund. *Maulavi Rafiuddin v. Syed Ahmed*, 7 I. C. 94 = 14 C. W. N. 1101. But in *Muhammad Roser v. Rajballabnath Singh*, 107 I. C. 320, it was held that the Court has power to make an order for refund of excess court-fee paid under a *bona fide* mistake. See also 40 C. 365.

6. *Appeal found unnecessary*.—Where the appeal was found to be wholly unnecessary and no proceeding except the admission of the appeal had taken place in respect thereof, the Lucknow High Court held that it had jurisdiction to order a refund of court-fee even though the case did not fall within s. 13, 14 or 15. *Mahomed Sadiq Ali Khan v. Saiyid Ali Albas*, 7 Luck. 588 = 1933 Oudh 170.

**Refund under this section.**—The section specifies the circumstances when the refund could be granted. They are :

(A) When the plaint or appeal is *rejected* by a court on any of the grounds mentioned in the Code of Civil Procedure and is ordered by the appellate court to be received. The relevant provisions of the code are :

1. O. VII, r. 11, which provides that a plaint shall be rejected

(a) Where it does not disclose a cause of action.

(b) Where the relief claimed is undervalued and the plaintiff on being required by the court to correct the valuation within a time to be fixed by the court fails to do so.

(c) Where the relief claimed is properly valued, but the plaint is written on paper insufficiently stamped.

(d) Where the suit appears from the statement in the plaint to be barred by any law.

2. O. 41, r. 3, which provides that where the memorandum of appeal is not drawn up in the manner prescribed it may be rejected or returned to the appellant for rectification.

3. S. 107 (2) lays down that the appellate court shall have the same powers as are conferred on courts of original jurisdiction in respect of suits.

(B) When a suit is *remanded* on appeal under O. 41, r. 23 C.P.C. which provides that "Where the court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the appellate court might remand the case \* \* with directions to readmit the suit \* \* and proceed to determine the suit." It is only in the above two classes of cases, viz., in the case of a rejection or of remand that a total or a partial refund of court-fee is permissible. Where there is a remand under O. 41, r. 23, C.P.C. the refund is mandatory. *Bansi Lal v. Jhamman Shah*, 1930 Lah. 441; *Gaura Telin v. Shriram Bhojyer*, 1930 Nag. 261. When the Court of Second Appeal remands a case to the lower appellate court on any of the grounds mentioned in O. 41, r. 23, C. P. Code, a suit is remanded within the meaning of the section and the appellant is entitled to claim a refund of the court-fee paid on the memorandum of appeal. *Shantilal v. Agha Dost Mahomed*, 140 I. C. 56 = 1932 A. L. J. 742 = 1932 All. 641 (F. B.) Even where the High Court in Second Appeal remands the suit to the court of first instance, it has the power to direct refund of court-fee. The words "lower court" includes the court of first instance where the appellate court is the High Court. *Kanhaiya Lal v. Mahadei*, 54 All. 523 = 140 I. C. 466 = 1932 All. 550. Where a suit was dismissed against certain defendants and the appeal preferred by the plaintiff against the dismissal was dismissed by the lower appellate court, and the High Court on Second Appeal reverses the decree of the lower appellate court as well as that of the first court and sends the case back to the first court, the plaintiff is entitled to a refund of the court-fee paid in the High Court but not in the lower appellate court. *Kaulpati Kuer v. Kashi Prasad Singh*, 56 All. 526 = 1934 All. 106 (F. B.)

**Remand under inherent powers.**—Where a remand is made under the inherent powers of a court under s. 151, C.P.C. the refund of the fee is discretionary. *Bansi Lal v. Jhamman Shah*, 1930 Lah. 441; *Jagdish Chowdry v. Radha Dubey*, 6 Pat. 599 = 1928 Pat. 35. S. 13 does not prohibit such refund inasmuch as the inherent powers which permit a court to make a remand in cases other than those falling under O. 41, r. 23, also permit the court ordering a refund of the fee paid on the memorandum of appeal. *Central Bank of India, Ltd. v.*

*Thakur Das Tulsi Ram*, 141 I. C. 450=1933 Lah. 135. But see *Ram Chand v. Bhagwan Das*, 1935 Pesh. 8, in which it has been held that s. 151 C. P. C. cannot be invoked to grant refund when a remand is made under that section.

**Preliminary point.**—The remand must be one under O. 41, r. 23, C. P. C. *Jagannath v. Maruti*, 36 I. C. 241; *Nand Kumar v. Bilasram*, 43 I. C. 855; *Mahamod v. Fateghar*, 1927 Lah. 196=100 I. C. 49. If a remand can be deemed to have been made on any of the grounds mentioned in O. 41, r. 23, C. P. Code, the appellant is entitled to a refund certificate under the section, although the appellate court erroneously purports to make the remand under s. 151, C. P. Code. *Sushila Mala Patta Mahadevi v. Sumanto*, 151 I. C. 721=40 L. W. 372=1934 Mad. 643. To attract the operation of s. 13, the lower court must have disposed of the suit on a preliminary point.

**And what is decision on a preliminary point?** It is not a case decided upon the whole evidence and upon all the issues raised in the suit. See 92 I. C. 1045; 96 I. C. 786; 98 I. C. 906 and 103 I. C. 537.

There is no definition in the Code of Civil Procedure as to what a preliminary point is. It means and includes all points or issues of fact or law the determination of which precludes the necessity for the determination of the other points or issues of fact or law and which determination disposes of the entire suit. *Sheoambar v. Lallu Singh*, 9 A. 26; *Muhammad Allahabad v. Ismail*, 10 A. 289. See also 99 I. C. 974 and 30 A. 165=37 I. C. 383 for the meaning of what is meant by a preliminary point. Preliminary point means a matter preliminary to the determination of the suit which the parties bring before the court for decision. *Krishnan v. Muthan*, 22 M. 172.

"A preliminary point under O. XLI, r. 23 of the Civil Procedure Code is any point the decision of which avoids the necessity for the full hearing of the suit. \* \* Such point comprises not only points like limitation, jurisdiction and *res judicata*, but also points such as that evidence tendered was not admissible, or that there was no case for the defendant to answer, or that there was no proof of publication in a libel suit. In all these cases the points are preliminary to the final disposal of the suit.

"The words 'preliminary point' occur in s. 562 of the Civil Procedure Code of 1882 which corresponds to the present O. 43, r. 23 and are interpreted by Mahmood, J., in *Ram Narain v. Bhawanidin* where it is laid down that the words are not confined to such legal points only as may be pleaded in bar of suit but comprehend all such points as may have prevented the court from disposing of the case on the merits, whether such points are pure questions of law or pure questions of fact; and he gives as an instance a mortgage suit in which it is held that the plaintiff is not a son and heir of the mortgagor and therefore the suit is dismissed without entering into the merits of the various pleas relating to the mortgage. The same view

is expressed in *Muhammad Allahabad Khan v. Muhammad Ismal Khan*, 10 A. 289 at page 322 by Edge, C.J., and on page 343 by Mahmood J. The same view is expressed in different words in *Ramachandra Joshi v. Hazi Kassim* by Muthusami Ayyar and Best, JJ., and also by Seshagiri Ayyar and Odgers, JJ., in *Anthappa Chetty v. Ramnathan Chetty*, though, as I have stated in my view, they misunderstood or misapplied the principle enunciated." \* \* Courts-Trotter, J., observed as follows.—"Those points are 'preliminary' which, like pleas of *res judicata* or jurisdiction, are strictly independent of the merits. A preliminary point, means a point which, when decided, in the way in which it is in fact decided, determines the result of the suit, and discharges the court from the duty of trying all or some of the other issues in the case." *Malayath Veetil Raman Nayar and others v. Krishan Nambudripad*, 45 Mad. 900, at pp. 910 and 912.

**Madras Amendment of C. P. C. and its effect**—O. 41, r. 23 has been re-enacted in Madras and the effect of it is that where the appellate court, in reversing or setting aside the decree under appeal considers it necessary in the interests of justice to remand the case, the appellate court may remand it. Under the older code, s. 564 prohibited the appellate court from making a remand except as provided by s. 562 (O. 41, r. 23 of the present Code). S. 564 was found extremely embarrassing in practice and was repealed although the Legislature thought it safer not to formally enact that even in cases not covered by r. 23 the appellate court has power to remand. "All High Courts except the Allahabad High Court have held that even in cases not falling within the scope of O. 41 r. 23 an appellate court has an inherent power *ex debito justitiæ* to remand a case for retrial." This inherent power was given legislative recognition by the repeal of s. 564 of the Code of 1888. But on grounds of expediency as aforesaid the Legislature has not thought it necessary to specifically enlarge the powers of court and enact r. 23 as giving unlimited powers of remand to courts, though the rule as it stands at present coupled with the inherent powers of court, results only in the position that courts can remand any case if they think it fit. The Madras amendment keeps the restricted powers of remand given by Code in r. 23 intact and grafts on to it, an alternative clause which is none else than a legislative recognition of the inherent powers of court to order a remand whenever a court thinks it expedient. The necessity to have these two clauses in juxtaposition, the first being merged in the second, is not easy to comprehend. But the result is that O. 41 r. 23 as enacted in Madras, empowers courts to remand cases whenever it thinks it expedient to do so. Consequently the consideration of the question of what is a preliminary point and whether the lower court had decided any case on a preliminary point becomes quite unnecessary so far as Madras is concerned.

It follows from the above that whenever an appellate court remands a case, whether the appeal was or was not in a case where the decision was on a preliminary point, the appellat is entitled to a

refund of court-fee. S. 13 of the Court-Fees Act provides that where a suit is remanded in appeal on any of the grounds mentioned in s. 351 of the Code, the court-fee paid on the memorandum of appeal should be refunded. The Code referred to is the Code of 1859. This was re-enacted as s. 562 in the Code of 1882, and the corresponding provision of the present Code of 1908 is O. 41, r. 23. Under s. 8 of the General Clauses Act (X of 1897), the reference to the Code of 1859 is to be taken to be to the corresponding Rule under the present Code. The effect is that under r. 23 courts can remand *any* case and under s. 13 Court-Fees Act, the appellant is entitled to a refund of court-fee paid on the appeal memorandum in *all* cases of remand. It is for consideration how far the effect of the amendment on the Court-Fees Act was realised, when r. 23 was re-enacted in Madras recognising the judicial decisions that laid down that courts had inherent powers to remand cases and the same was not controlled or limited by O. 41, r. 23 C. P. C.

**Remand on addition of parties.**—Where the appellate court directed the lower court to add certain parties and retry the suit it was held to be an order upon a preliminary point. *Jadav v. Anath Bandhu*, 37 C. 171 = 5 I. C. 998.

In *Mohammud Shafi v. Fatehgar and others*, 1927 Lah. 196 = 100 I. C. 49, it was held that an order on appeal directing the addition of parties to a suit or amendment of a plaint and remanding the suit for retrial is an order upon a point, which is necessarily preliminary to the proper decision and trial of the suit, and the order of remand is therefore under O. 41, r. 23 C. P. C.

An order refunding court-fee when a remand is made can only be passed under s. 13 of the Court-Fees Act in a case where the remand is under O. 41, r. 23. 1927 Lah. 196; *Agent, Bengal Nagpur Ry. v. Behari Lal Dutt*, 1925 Cal. 716 = 52 C. 783. The judgment in *Jadab Gobinda Singh v. Anath Bandhu Sahu*, 37 C. 171 = 51 I. C. 998, is also authority for holding that an order on appeal directing the addition of parties to a suit and remanding the suit for retrial is an order upon a point which is necessarily preliminary to the proper decision, and the trial of the suit.

**Wrong admission of document.**—“A certificate under s. 13 Court-Fees Act should be granted when a suit dismissed on the ground a document relied on is inadmissible, is remanded, as the remand is under O. 41, r. 23. \* \* The trial court dismissed the suit holding that the agreement was inadmissible in evidence for want of registration. The District Judge held that the document was admissible, and remanded the case to the trial court, for decision on the merits; but omitted to pass an order for the refund of the court-fee stamp as required by s. 13 Court-Fees Act. On an application for refund of the court-fee by the appellant, the learned judge held that the remand was not under O. 41, r. 23, and declined to grant the

refund. \* \* It appears to me that the remand in this case was clearly under O. 41, r. 23, as the trial court decided the suit upon a preliminary point *i.e.*, the want of the admissibility of the document, relied upon by the plaintiff and had not decided any other issues in the case. I accept this petition, and direct the District Judge to refund to the petitioner the court-fees paid by him on the memorandum of appeal." *Sher Muhammad v. Mian Ahmad*, 103 I. C. 298 = 1927 Lah. 512.

**Amendment of plaint.**—Order of court directing retrial on an amended plaint is one under O. 41, r. 23, C. P. C. *Muhammad Shafi v. Panchayat Fateghar*, 100 I. C. 491 = 1927 Lah. 196.

**Section mandatory**—Where the requirements of the section are satisfied then the court is bound to direct the refund of the court-fee paid. The provision is mandatory. Where the court of first instance disposed of a suit on a preliminary point and an appeal was allowed and the suit remanded for retrial, the court-fee should be directed to be refunded and should not be included in the decree as costs of the successful appellant. *Surendra Nath v. Girija Nath*, 15 I. C. 220.

**Revision.**—Refusal to grant a refund where it must be done is a material irregularity and the High Court could revise it under s. 115, C. P. C. *Bhansingh v. Chaganiram*, 42 B. 363 = 45 I. C. 552.

### Refund under special Acts.

1. *Madras City Civil Court Act. (Madras Act VII of 1892), s. 13.*—"Whenever any suit or proceeding in the City Civil Court is settled by the agreement of the parties before issues have been settled or any evidence recorded half the amount of the institution fees paid by the plaintiff shall be repaid to him by the court."

2. *Presidency Small Cause Courts Act (XV of 1882).*—S. 73 of the Act runs as follows: "Whenever any such suit or proceeding is settled by agreement of the parties before the hearing, half the amount of all fees paid up to that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid."

3. *The Punjab Courts Act (XVIII of 1884).*—S. 72 provides for the refund of court-fees paid by a party under certain circumstances therein set out.

**Probate and Letters of Administration.**—For refund of fees in such cases see ss. 19-A to 19-K of the Court-Fees Act.

**Cash payment of court-fees.**—Where a party who was directed to pay deficit court fee had deposited cash instead of court-fee stamps with his memorandum of appeal and the appeal was rejected for non-payment of the deficit court-fee, the amount could not be refunded. It makes no difference whatever that the sum deposited in court undoubtedly as court-fees was not actually converted into stamps. The court held that there is no provision in the Court-Fees

Act authorising the refund of any court-fee paid on the memorandum of appeal, when the order to make up the deficit has not been complied with by the party and the appeal consequently rejected. *Janak Prasad v. Askanan Prasad*, 6 Pat. 602 = 105 I. C. 742.

**Court-fees paid under order of court.**—Where as directed by court, the party made a payment of excess court-fee, the appellate court could direct its refund. *Indar Sen v. Rikhai*, 30 A. 103; *Katchi Routhier v. Naima Muhammad*, 28 I. C. 300; *Girish Chandra v. Girish Chandra*, 36 C. W. N. 190. But see *Hitendra Singh v. Maharaja of Darbhanga*, 92 I. C. 626. But the case is different if a party says he made the payment owing to the wrong advice of the stamp reporter. *Jagedish v. Radha*, 6 Pat. 599 = 105 I. C. 740.

### **Mortgage suits.**

**Appeal against preliminary decree.**—A refund certificate cannot be granted by court in such an appeal as the suit has not been disposed of by the first court. *Nandekumar v. Bilas Ram*, 43 I. C. 855 (Pat.).

**Appeal from the final decree.**—Where an appeal from the preliminary decree was pending "it was not necessary for the mortgagee to file another appeal from the final decree. The court was competent to order the refund of the court-fee paid for the appeal against the final decree." *Swami Dayal v. Muhammad Sher Khan*, 83 I. C. 829 (Oudh); *Kanhaiya Lal v. Tribeni Sahai*, 36 All. 532. As an unqualified pronouncement the observation seems to be rather too wide for a mere variation of the preliminary decree may not necessarily imply the grant of all the modifications sought in a final decree. The position is too obvious to necessitate any further elaboration. See also under Sch. I, Art. 1.

**Cross objections.**—The section speaks only of a memorandum of appeal and does not mention a memorandum of cross objections. Consequently it was held in 1898 Bombay Printed Judgments 72, that no refund of court-fees could be made on a memorandum of cross objections. But in Madras after the amendment of 1922 no such difficulty could arise. So also in Bengal after the amending Act of 1935.

**Application for refund of stamps.**—An application under s. 13 for refund of court-fee is covered by s. 19 cl. (xx) and no court-fee is chargeable on it. *Jag Narain Pandey v. Mata Badal*, 1932 All. 590. See also 9 W. R. 357. But where the application is put in under s. 151, C. P. C. it must be stamped. In Madras applications to the High Court for refund of court-fees paid under a mistake or by misdirection, are exempt from stamp duty *vide* G. O. No. 31 of 1927 dated 5-1-27.

**Original side of the High Court.**—In those High Courts which exercise ordinary original civil jurisdiction, the applicability of the section is doubtful. The original side of the High Court is not a "lower court" within the meaning of the section when an appeal is preferred therefrom and heard by a



bench of two judges on the appellate side. There is nothing in the O. S. Rules about refund of court-fees. The only course perhaps is for the court to act under s. 151, C. P. C. for the refund of court-fees in the case dealt with under s. 13 of the Court-Fees Act.

**Discount on refund.**—Where the refund is made under this section there can be no deduction in the shape of a discount. But where excess court-fee is paid by mistake and a refund is ordered, the party who has affixed stamps in excess will be allowed a refund of their value less one anna in the Rupee except in cases in which the amount of the excess value is less than a Rupee. See the Civil Rules of Practice and Circular Orders of the High Court, Vol. I, p. 182.

**Proviso.**—Where an appeal is remanded in part the appellant is entitled to a proportionate refund of the court-fee paid by him. But where the decree was set aside by the appellate court only as against some of the respondents and dismissed as against the rest, the appellants are not entitled to the refund of any court-fee. *In the matter of Bhagwanti*, 39 I. C. 28 = 14 A. L. J. 671. A suit filed against six defendants was dismissed *in toto* by the first court and on appeal the lower appellate court held that defendants 3 to 5 were liable but defendants 1 and 6 were not liable and remanded the case for re-trial as against the former. Plaintiff filed a second appeal and the High Court held that defendants 1 and 6 were equally liable and remanded the case to the court of first instance for trial in its entirety. As the appeal was only against the order which was in favour of defendants 1 and 6, and as the court remanded only this portion of the subject-matter of the suit, the whole fee paid by the appellant was refundable under the section. *Kankaiya Lal v. Mahadei*, 54 All. 523 = 140 I. C. 466 = 1932 All. 550.

14. Where an application for a review of judgment is presented on or after the ninetieth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may, in its discretion grant him a certificate authorising him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day.

#### COMMENTARY.

This and the next following section deal with cases of refund of court-fee stamps on review applications. This section gives the discretion to courts to direct the refund of the *excess* court-fee paid, when a review petition is under justifiable circumstances presented after the 89th day. Section 15 deals with the refund of the court-fee paid for the review application itself—the amount paid over and

above what is payable on any other application to the court—when the petitioner is successful in whole or in part in his review petition.

**Review.**—Section 144 of the C. P. C. provides that any person considering himself aggrieved

(a) by a decree or order from which appeal is allowed by this Code but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a court of small causes, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.

See also O. 47 of the Code.

**Court-fee on review applications.**—Art. 5 of Sch. I of the Act provides that where such a petition is presented before the 90th day of the decree in the suit or appeal in which the judgment is sought to be reviewed, the court-fee payable is "one half of the fee leviable on the plaint or memorandum of appeal" and Art. 4 provides that where it is preferred *on or after* the 90th day the full fee leviable on the plaint or memorandum of appeal should be paid. This section (s. 14) provides that where a review application is made, even beyond the 89th day of the decree till which date alone the concession rate of fee is leviable, and where the court finds that the delay is not due to any laches on the part of the petitioner it may order the excess half of the court-fee stamp paid to be refunded. It is needless to remark this has got nothing to do with the ultimate success or failure of the review application on the merits.

**Computation of the fee**—The 'fee or half the fee' leviable on the plaint or the memo of appeal, the judgment in which is sought to be reviewed, is payable on an application for review irrespective of the relief claimed in the petition. *Husania v. Sahib Nur*, 20 I. C. 3. But see also 50 M. 488 and commentaries under Sch. I, Arts. 4 and 5.

**Computation of time.**—Full fee is leviable when the application is filed *on or after* the 90th day of the judgment.

**Sunday, holiday or vacation**—If the 89th day falls on a Sunday or a holiday when the court is closed, and the application is filed on the first working day after the said holiday, full court-fee is leviable, as s. 4 of the Limitation Act serves only to extend time in instituting or filing cases so that they may not become time barred. It has no connection with this section which relates to court-fees. The Limitation Act is not *in pari materia* with the Court-Fees Act. 9 M. 134. Section 4 of the Limitation Act runs as follows: "Where the period of limitation prescribed for any suit, appeal or application, expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day the court reopens."

And s. 10 of the General Clauses Act (X of 1897) provides that "Where by any Act of the Governor General in Council or Regulation made *after the commencement of this Act*, any act or proceeding is directed or allowed to be done \* \* \* within a prescribed period \* \* \* then if the court or office is closed on that day or the last day of the prescribed period, that act or proceeding shall be considered as done \* \* in due time, if it is done \* \* on the next day afterwards on which the court \* \* is open." If the court is closed on the 89th day the period provided by Art. 5, Sch. I of the Court Fees Act is not extended and the higher court-fee under Art. 4 has to be paid. The provisions of the Limitation Act and the General Clauses Act do not apply. *In re Durga Prosunna*, 9 C. L. R. 479; *In re Kota* 9 M. 134; *Sayere Bibi v. Bhutanath*, 15 I. C. 455.

**Time taken to get copy of the judgment sought to be reviewed**—This too cannot be deducted in the computation of time for the review. *Jugat v. Jogeshwar*, 2 O. C. 302. But see *Kalipada v. Sekhar*, 35 I. C. 348; *Gangadar v. Shekhar*, 20 C. W. N. 967. The provisions of the Limitation Act, s. 12 does not apply to the court-fees.

**An idle formality dispensed with.**—The result of the enforcement of the rule that the review application should be presented within 90 days irrespective of the fact that the 89th day falls on a Sunday or hoilday would only duplicate the work of the court, first on insisting that the higher fee under Art. 4 of Sch. I of the Act should be paid and then acting under this section hold there was no laches on the part of the applicant, and direct the refund of half the fee. In such a case, the Calcutta High Court held that the collection and the refund is an idle formality and permitted a review petition filed after the 89th day to be heard on affixing half the court-fee, where there was no laches on the part of the applicant. *Nowrang v. Janardan*, 1924 Cal. 994=80 I. C. 794. When s 4 of the Limitation Act and s. 10 of the General Clauses Act permit the extension of the prescribed period only to a certain contingency, viz., the last day of the prescribed period being a holiday or Sunday, s. 5 of the Limitation Act gives ample discretion to the court to receive an application after the expiry of the period when the applicant satisfies the court "that he had *sufficient cause* for not preferring the appeal or making the application within such period." The word used in this section is *laches* and the absence of any laches on the part of applicant gives him the power to get a refund of half the court-fee in case he had to pay it in full.

**15.** Where an application for a review of judgment is admitted, and where, on the rehearing, the Court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from

Refund where Court reverses or modifies its former decision on grounds of mistake.

the Court authorizing him to receive back from the Collector so much of the fee paid on the [application] as exceeds the fee payable on any other application to such Court under the second schedule to this Act, No. 1, clause (b) or clause (d).

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due wholly or in part, to fresh evidence which might have been produced at the original hearing.

#### COMMENTARY.

**Amendments.**—The word “application” was substituted for the original words “plaint or memorandum of appeal” by the Court-Fees Amendment Act XX of 1870.

**Review of judgment.**—O. 47, r. 1, C. P. C. entitles a party to apply for review in the following cases.

1. On the discovery of new and important matter or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time the decree was passed,

2. On account of some mistake or error apparent on the face of the record, or

3. For any other sufficient reason.

The policy of the legislature is to put a clog on possible *mala fide* application for review. *Satyakripal Banerji v. Satyabikash Benerji*, 57 I. C. 679 = 1930 Cal. 631.

**Court-fee—amount payable.**—The court-fees on the petition for review is leviable on the value of the entire claim in the suit and not merely on the value of the relief sought for in the review proceedings. *Satyakripal Banerji v. Satyabikash Bannerji*, 57 C. 679 = 1930 Cal. 631. But there is conflict of decisions on this point—see under Art. 4 and 5 of Sch. I.

#### Conditions to be fulfilled under this section.

1. The court must reverse or modify its former decision.
2. It must be on the ground of mistake in law or fact.
3. The reversal or modification must not be due wholly or in part to fresh evidence which might have been produced at the original hearing.

A comparison of the provisions of O. 47, r. 1, C. P. C. and this section shows that they do not coincide.

**Fresh evidence.**—It is provided in the proviso to the section that the modification or reversal must not be due to the production of "fresh evidence which might have been produced at the original hearing." It appears that the words "might have been" means only "could have been". The principle underlying O. 47, r. 1, C. P. C. and section 15 Court-Fees Act is that a party who has not been diligent is not entitled to any concession. If a party was not aware of the existence of such evidence or with all due diligence could not produce it at the trial, it is obvious the party is guilty of no negligence in failing to produce it. Hence any evidence that could not have been produced could not be held to be evidence that "might have been produced." It may be observed therefore that where the fresh evidence could have been produced at the trial, the review would not be allowed under O. 47, r. 1. Hence there could be no "reversal or modification if it is due *wholly* \* \* \* to fresh evidence which might have been produced at the original hearing" as set out in para. 2 of this section for the simple reason that a review is incompetent under those circumstances.

**Mistake or error.**—O. 47, r. 1, C. P. C. provides that the mistake or error must be apparent on the face of the record. But under s. 15 of the Court-Fees Act, the modification could be on "a mistake in law or fact". Though there is the absence of the qualifying clause 'apparent on the face of the record' in s. 15 the section has to be read with O. 47, r. 1, and a review is competent only when the conditions set out in O. 47, r. 1, C. P. C. are fulfilled.

**For any other sufficient reason.**—This is one of the grounds on which review can be allowed under O. 47, r. 1, C. P. C. But that would not entitle a successful applicant for review to claim a refund of court-fee paid on the review petition, under s. 15, of this Act.

**Refund amount.**—*The amount refundable* is only the difference between the fee paid and the court-fee payable under Art. 1, cl. (b) or (d) Sch. II of the Act.

**Inherent powers of Court.**—The mere fact that s. 151, C.P.C. has been also added as the authority under which an application is filed, does not prevent the order of refund which may be otherwise allowable. *Probhas Kumar Ganguli v. Nithar Lal Ganguli*, 84 I. C. 278 = 1924 Cal. 1054.

Where the appellant practised a fraud on the court, not actually serving process on the respondent and the respondent applied for review of the compromise decree, it was held that the court had inherent power to review in such cases where it was misled and that no court-fee was payable. *Peary Chowdury v. Sonoo Das*, 27 I. C. 628 = 19 C. W. N. 419.

Where also the mistake is not one of fact or of law but a mere clerical or arithmetical error, the court can correct the same under

s. 151 or 152, C. P. C. and could order a refund of court-fee under its inherent power under s. 151 without relying on s. 15 of the Court-Fees Act, *C. T. A. M. Chettiar, v. Ko Yin Byi*, 7 R. 88=1929 Rang. 158.

**Delay in application.**—A delay of six months in making the application for refund was considered to be no bar to the relief under this section. *Tej Narain Singh v. Secretary of State for India*, 10 Pat. 649.

Even in cases where s. 15 is inapplicable the court has power to order refund of court fees to meet the ends of justice and to prevent the abuse of the process of the court. *C. T. A. M. Chettiyar Firm v. Ko Yin Byi*, 7 Rang. 88=1927 Rang. 158.

### 16 *This section has been repealed.*

It ran as follows: "When any appeal is presented to a Civil Court not against the whole of a decision but only against so much thereof as relates to a portion of the subject-matter of the suit, and on the hearing of such appeal respondent takes under s. 561 of the Code of Civil Procedure an objection to any part of the said decision other than the part appealed against, the Court shall not hear such objection until the respondent shall have paid an additional court-fee which would have been payable had the appeal comprised the part of the decision so objected to".

#### COMMENTARY.

This section as it stood provided for the levy of court-fee from the respondent when he took objection to that portion of the decree of the lower court against which no appeal was preferred. This has been repealed by schedule V of the Code of Civil Procedure 1908, as unnecessary in view of the insertion of the word "cross-objection" in Art. I, Sch. I of the Act. Sch. V of the Code has been since repealed by Act XVII of 1914, section 3. This does not result in the restoration of the original provision of the Act, *viz.*, section 18, as it is not expressly enacted so. See section 7 of the General Clauses Act (X of 1897).

The mere repeal of a Repealing Act or the repealing portion of a Repealing Act does not by itself revive the original Act or the repealed portion thereof. 7 M. H. C. App. 8; 6 M. 336.

The section gave rise to a good many difficulties. The use of the words, "The Court shall not hear" was construed to mean that the court-fee can be paid when the appeal was actually ripe for 'hearing' and need not be paid when the cross-objections are preferred. This is now changed by Art. 1, Sch. I and s. 6 of the Act, the court-fee being payable at the time of presentation of the document.

Again another difficulty was the rule of computation. The fee levied was the difference between the fee paid on the appeal memo and that payable on it if it included the subject-matter of the cross objec-

tions. That would make a difference in the fee payable as is at present done *viz.*, by charging the objections separately.

**17.** Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal [*or of cross-objection* Bihar and Orissa] shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal [*or cross-objection* Bihar and Orissa] in suits embracing separately each of such subjects would be liable under this Act.

Multifarious suits.

Nothing in the former part of this section shall be deemed to affect the power conferred by the Code of Civil Procedure, section 9. [Sch I, Order II, R. 6 of Act V of 1908.]

**Local Amendments.**—The words “or cross-objection” has been added by the Bihar and Orissa Court-Fees Amendment Act (I of 1922.)

**Bengal Amendment.**—The following section has been substituted for s. 17 in Bengal by Bengal Act VII of 1935, namely :

**17.** (1) *In any suit in which two or more separate and distinct causes of action are joined and separate and distinct reliefs are sought in respect of each, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees with which the plaints or memoranda of appeal would be chargeable under this Act in separate suits instituted in respect of each such cause of action :*

Multifarious suits

*Provided that nothing in this sub-section shall be deemed to affect any power conferred by or under the Code of Civil Procedure, 1908, to order separate trials.*

(2) *Where more reliefs than one based on the same cause of action are sought either jointly or in the alternative, the fee shall be paid according to the value of the relief in respect of which the largest fee is payable.*

#### COMMENTARY.

**Object of the section.**—The object of the section is to prevent loss of revenue to the State. *Nur Ilahi v. Umar Baksh*, 6 I. C. 715 ; *Fatima Begum v. Mohammad*, 90 P. R. 1895.

### Scope of the section.

(1) The section applies only to suits and appeals and not to applications and appeals against orders passed therein. *Upadhyaya Takur v. Perisdi Singh*, 23 C. 723; *Dhanpatmal Dewan Chand v. Labb Chand Sardarilal*, 1933 Sind 343.

(2) The object of the section is to levy the proper fee in cases of distinct claims arising out of separate causes of action, with a view to safeguard the revenue while permitting the party to file a single suit for distinct subjects where it does not offend the provisions of the C. P. C. The section is applicable to cumulative reliefs arising out of different causes of action and not to different reliefs based on a single cause of action. *Manohur v. Bawa Ramachandra*, 2 B. 219; *Girdhari Lal v. Ram Lal*, 21 A. 200; *Reference under the Court-Fees Act*, 16 I. C. 401.

(3) The section equally applies even when no cumulative reliefs are asked for, but, only alternative reliefs are sought, provided that they arise out of different causes of action. *Dharum Chand v. Gori Lal*, 47 I. C. 886.

(4) It does not apply to different reliefs arising out of the same cause of action. *Mukhlal v. Ramdeyan*, 44 I. C. 143 (Patna); 1925 Pat. 193.

There is no definition of the word "subjects" in the Act. It has been held to mean cause of action.

Compare the analogous s. 5 of the Stamp Act and the decisions thereunder and under the English Stamp Act. S. 5 provides "Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act."

**Multifarious suits.**— Where there are two or more defendants and two or more causes of action, Order 2, r. 3, C. P. C. provides that the plaintiff may unite in the same suit, causes of action against the same defendants jointly. Joint interest in the questions raised by litigation is a condition precedent to the joinder of several causes of action against several defendants. *Bhagavati Prasad v. Bindishri*, 6 A. 106. If the causes of action alleged are separate and the defendants are arrayed separately or in different sets, the suit is bad for misjoinder of defendants and causes of action, technically multifariousness. *Narasinga Das v. Mangal*, 5 A. 163. There is no provision in the Code of Civil Procedure allowing distinct causes of action that is to say causes of action in which the defendants are not all jointly interested to be united in one suit. *Uma Bai v. Bahu Balwant*, 34 B. 358 = 3 I.C. 165. But this rule has to be read subject to Order 1, r. 3, C. P. C. which provides that all persons may be joined as defendants against whom any right to relief in respect of, or arising out of the same act, or transaction, or series of acts or transactions is alleged to exist,



whether jointly, severally or in the alternative, where if separate suits were brought against such persons any common question of law or fact would arise. Hence it follows that two or more defendants may be joined as parties in one suit though there are two or more causes of action, and though they may not be all jointly interested in all the causes of action provided that the conditions laid down in Order 1, Rule 3, C. P. C. are fulfilled, *viz.*, the relief claimed arising out of the same act or transaction or there being any common question of law or fact. A multifarious suit is one where several causes of action are combined and the several reliefs either cumulative or alternative that flow from it are prayed for. The test that distinguishes a multifarious suit from a suit where a number of reliefs are asked for is whether separate suits can be filed in respect of the matter or subjects dealt with in that single suit. If so, practically it is a bundle of suits which for the sake of convenience are permitted to be filed as a single suit. Obviously therefore where out of two or more reliefs claimed one relief flows from the other or there is any statutory bar to the filing of the suit with only one of the reliefs prayed for (*e. g.*, section 42, Specific Relief Act proviso) or to the filing of another suit if one of the reliefs is omitted (*e. g.*, Order II, Rule 2, C. P. C.) then a suit which embraces such reliefs cannot be construed to be a multifarious suit. The present section of the Court-Fees Act prescribes the fee leviable in cases where a multifarious suit is permissible under the C. P. C.

**Distinct subjects.**—All the High Courts have unanimously held this to mean cause of action. A separate suit can be brought on each cause of action. Hence if the different claims in a suit can be made the grounds of separate suits, then there are distinct subjects in the suit within the meaning of this section.

*Patna.* The ordinary meaning of the word "subject" when used in law is a thing or matter over which a right is exercised. The word "subjects" in the section means causes of action. *Nawaba Waziri Begam v. Babu Shashi Bushan Roy*, 2 Pat. 874 = 1914 Pat. 77; 57 I.C. 685. *Mahanta Ram Narain Gir v. Gowari Shanker*, 7 Pat. 405 = 110 I. C. 191 = 1928 Pat. 274; Per *Jwala Prasad, J.* The word 'subject' in Section 17 Court Fees Act means cause of action, and is not to be interpreted with reference to Section 7. *Nauratan v. Stephenson*, 1922 Pat. 359. See also 57 I. C. 685 = 4 Pat. L. J. 197; *E. I. Ry. Coy. v. Ahmadi Khan*, 1924 Pat. 596 and *Sitbaran Pandey v. Lokenath Missir*, 3 P. 618.

The word "subject" also means "matters." Per *Jwala Prasad, J.*, in *Mahanta Ram Narain Gir v. Gauri Shanker*, 7 Pat. 405 = 1928 Pat. 274.

*Madras.* The word 'subject' in this section is of a somewhat uncertain connotation and is not capable of any precise definition. Per *Krishnan, J.*, in *Sundara Ramanujam Naidu v. Sivalingam Pillai*, 47 M. 150 = 18 L. W. 33 = 1924 Mad. 360 = 45 M. L. J. 431. *Neelakantan v. Anantanarayana*, 30 M. 61 = 16 M. L. J. 462; *Kelu*

*Achan v. Cheria Parvati*, 72 I. C. 87; *Dawachilaya Pillai v. Pannathal*, 18 M. 459. See also C. R. P. 775/30 (Madras, unreported), *Mothia Mera Moideen v. Muhammad Ismail Rowther*, 1930 M. W. N. 758.

*Allahabad*. "Subject" means "causes of action." *Malchand v. Shubcharam*, 2 A. 676; *Durga Prasad v. Purandar*, 27 A. 186; See also *Chamaili v. Ram Dai*, 1 A. 552; *Chedi Lal v. Kairal Chand*, 2 A. 682; *Purushotan v. Lachman Das*, 9 A. 252; *Reference under the Court-Fees Act*, 16 A. 401; *Hashtanunissa Begam v. Md. Abdul Kareem*, 29 A. 135.

It has also been construed to mean 'kinds of relief.' *Chamili v. Ram Das*, 1 A. 552 F. B.

*Bombay*. See *Fullchand v. Bai Ichha*, 12 Bom. 98; *Hiralal Motichand v. Ganapat Lahanee*, 46 Bom. 142.

*Rangoon*. See *In re P. L. R. M. N. Perchiappa Chetty v. Po Kin*, 4 I. C. 289; *A. W. Zamal v. Cyril Brown*, 36 I. C. 883; *Bank of Bengal v. R. M. L. Muthia Chetty*, 30 I. C. 705.

*Lahore*. See *Fatima v. Mahommad*, 96 P. R. 1895; *Raja and others v. Muttalli and others*, 1926 Lah. 467.

*Nagpur*. See *Dharamchand v. Gorelall*, 47 I.C. 886; *Hirderam v. Ram Charan*, 1924 Nag. 169.

*Calcutta*. See *Kissori Lal Ray v. Sharat Chandra Mozumdar*, 8 C. 593; *Dhakeswar Prasad v. Iswardhari*, 22 C. L. J. 57; *Beni Madhab Sarkar v. Govind Chandra Sarkar*, 32 C. W. N. 669; *Satischandra Ghosh v. Kalidasi*, 26 C. W. N. 177.

**Cause of action.**—There is no definition of this expression in the C. P. C. It means every fact which would be necessary for the plaintiff to prove in order to support his right to the judgment of the court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved to entitle the plaintiff to a decree. *Murti v. Bola Ram*, 16 A 165 F. B. It is the bundle of essential facts which it is necessary for the plaintiff to prove before he can succeed in the suit. *Musa v. Manilal*, 29 B. 368; *Raghunath v. Govindnarain*, 22 B. 451.

Where separate suits would not lie for parts of a claim there is only one single cause of action and consequently court-fee on the consolidated amount is sufficient. *E. I. Ry. Co. v. Ahmed Khan*, 1924 Pat. 596.

**History of the case law on the word 'Subject'.**—There is perhaps no word in this Act that has been so difficult to exactly define as the word 'subject' occurring in s. 17. The earliest reported case on the subject is a decision by four judges of the Allahabad High Court in (1878) 1 All. 552 (F. B.). In that case the plaintiff sued for (1) possession of lands, (2) possession

of a house, (3) *Wasiat* (mesne profits) and (4) damages. The plaintiff paid court-fee on the aggregate value of the four items, and the question was whether court-fee was payable separately under s. 17 on the value of each relief. The majority of the Bench (Stuart, C. J., and Turner and Pearson, JJ.) held that the words "distinct subjects" in s. 17 meant distinct *causes of action*, and that as the claims in the suit were based on different causes of action the suit embraced distinct subjects. Stuart, C. J. observed; "It appears to me that the meaning of the words 'distinct subjects' in s. 17 is shown with sufficient clearness in that section itself, when it states that 'the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the *plaints or memoranda of appeal in suits embracing separately* each of such subjects would be liable under this Act." This, I think, can only mean that the two or more distinct subjects are so chargeable as being distinct causes of action. His lordship did not accept the contention that distinct subjects meant each separate "thing" sued for. He further observed "it is not enough that the distinct subjects should be merely separate and distinct matters embraced in the claim. But on the other hand, I am of opinion that this interpretation of s. 17 of the Court Fees Act does not in the least degree affect the correctness of the calculation submitted by the office in the case which has given rise to this reference, for it is very clear to me that each of the separate distinct subjects mentioned in the report might be separate causes of action in separate suits, and therefore whether viewed in that light or merely as distinct and separate matters of claim, the correct fee chargeable in this case is that suggested by the Assistant Registrar." In the end His Lordship held that there were four distinct causes of action and therefore four distinct subjects in the suit. (Note.—The claims for possession of the land and the house appear to have arisen from different causes of action in this suit). Turner and Pearson, JJ., opined that "distinct subjects" mean distinct causes of action or *distinct kinds of relief*; e. g., if a suit is brought for the recovery of an inheritance, although the inheritance might consist of distinct properties and properties differing in kind, the fee would be computed on the aggregate value of the one subject of suit. But if a suit is brought (i) for the recovery of an inheritance, (ii) for an injunction and (iii) for the amount of a bill-of-exchange accepted by the defendant, each of these three subjects would be distinct, and the fee chargeable would be the aggregate of the fee chargeable in respect of each subject, if sued for in a separate suit." The *distinct kinds of relief* here, in this example viz., (i) *possession of property moveable and immoveable due by way of inheritance*, (ii) *injunction* and (iii) *recovery of money due under a contract*, arise from three different causes of action, and so distinct causes of action and distinct kinds of relief are ordinarily synonymous. But sometimes they may not coincide. For example, if the money in the above instance is due as part of the inheritance and not under a contract, the relief regarding

it would arise from the same cause of action as the relief regarding the immoveable and moveable properties. 'Cause of action' is therefore sometimes a wider expression than '*kind of relief*'. The dissenting judge. Sparkie, J., agreed with the narrow interpretation of the words and held that the words "distinct subjects" were not to be read as if they were distinct causes of action.

Of the three meanings (i) distinct causes of action, (ii) distinct kinds of relief and (iii) distinct matters or things, given for the word "distinct subjects", (i) and (ii) mean in practice the same, though occasionally (i) is wider and (iii) is the narrowest as several matters or things, *e. g.*, money, lands, houses, moveables, etc., may be claimed under a single cause of action, and it will be hard to levy fee separately on each of them. Consequently the view that subject means 'cause of action' is the most liberal interpretation, the incidence of charge under it being the least, and it is the interpretation which the majority of Judges accepted.

Though the majority of the judges in the above decision held that the expression "distinct subjects" in s. 17 meant distinct causes of action, there still remained some doubt as to the precise scope of its application in all cases, some of the judges, as seen from what is stated above, not having expressed their meaning quite clearly in that case. Two years later, in 1880, in 2 All. 676 (F.B.) the question was again referred to a Full Bench of four judges including Stuart C. J. and Sparkie, J. (the dissenting judge in the former decision), All the four judges unanimously held in this case that "distinct subjects" in s. 17 meant distinct and separate causes of action. Stuart, C. J., who had, of all the judges in 1 All. 552, laid down most clearly that "subject" in s. 17 could only mean cause of action says in the course of his judgment in this case "on the general, question of the construction to be applied to the case, I am not aware that I can express myself more clearly than I did in my judgment in *Chamiah Rani v. Rama Dai*, 1 All. 552. I there stated that the meaning of the words 'distinct subjects' in s. 17 of Act VII of 1870 is shown with sufficient clearness in that section itself, when it states that 'the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the *plaints or memoranda of appeal in suits embracing separately each of such subjects* would be liable under the Act'. This I think can only mean that the two or more distinct subjects are to be so chargeable as being distinct causes of action . . . and I remain entirely of the same opinion. This s. 17 plainly relates to multifarious suits which are allowable by s. 45 of the Code of Civil Procedure, Act X of 1877, a circumstance which appears to me to supply us at once with the principle by means of which we may solve the difficulty, showing that "distinct subjects" must for the purpose of the Court-Fees Act be distinct and separate claims or causes of action in single and separate suits, but which for the purpose of jurisdiction or the convenience of procedure, may be united in one suit. And this

is shown still more clearly in s. 17 itself, where 'distinct subjects' are described as distinct subjects 'in *suits* embracing *separately* each of *such* subjects,' in other words, as I understand this section, even if we had not the light thrown upon the point by s. 9 of the old and by s. 45 of the new Code of Civil Procedure, distinct and separate causes of action in distinct and separate suits". Sparkie, J., who was not quite clear in his judgment in 1 All. 552, and who was supposed to have been of dissenting opinion in it, has in the later decision clearly expressed that the word "subject" in s. 17 denotes cause of action. His lordship observed "If there was any vagueness in the opinion expressed by me, when the subject of this reference was last before the court, I desire to explain my meaning, and I hope more successfully on the present occasion, as follows. It was admitted at the hearing, and indeed looking at the marginal note to s. 17 of the Court-Fees Act, it could not be denied that the section refers to multifarious suits. The wording of s. 17 of the Court-Fees Act, "Where a suit embraces two or more distinct subjects" may be read with s. 45, Act X of 1877, which runs as follows:—'Subject to the rules contained in s. 44, the plaintiff may unite in the same suit several causes of action, and any plaintiff having causes of action against the same defendant may unite such causes of action in the same suit.' Such a suit would embrace two or more distinct subjects. The second paragraph of this section which corresponds with s. 9, Act VIII of 1859, referred to in the second paragraph of s. 45 provides that 'When causes of action are united, the jurisdiction of the court as regards the *suit* shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit'. This provision is of course made with a view to determine the jurisdiction of the court to entertain the suit. But it is noticeable that 'causes of action' and 'subject-matters' are clearly distinguished in this section. I would therefore say regarding the two or more 'distinct subjects of a suit' that they are the 'subject-matters of a suit' in which several 'causes of action' have been united, under the provisions of s. 45. There must, therefore, be several causes of action, and these several causes of action must be united in the same suit, and the subject-matters 'or two or more distinct subjects' of each cause of action united in the same suit, must be charged, as if each cause had not been so united in the same suit, but had been taken into court by a separate plaint or memorandum of appeal".

Along with the above case was also heard by the same full bench the case in 2 All. 682, in which also the same opinion was pronounced.

In 2 All. 676 the Full Bench removed the doubt as to the exact significance of the decision in 1 All. 552 and laid down that "subject" in s. 17 meant only cause of action. That decision has been followed later. In *Amaranath v. Thakur Das*, (1880) 3 All. 131, where the plaintiff sued for the recovery of money and various articles left in the custody of the defendants, and the question

was whether court fees were payable separately on the money and the value of each article separately under s. 17, it was held that there being only one cause of action for the recovery of the money and all the articles, the suit contained only one subject within the meaning of s. 17. The judgment says "It has been ruled by the Full Bench of the court in 2 All. 676 that the meaning of that section is that distinct subjects are to be separately chargeable with court-fees, as being claims or causes of action, which have been united in one suit for the purposes of jurisdiction or convenience of procedure. The claim in this suit does not embrace distinct subjects in the above sense" (p. 133). Now in this case, if "subject" had been taken to refer to the money and each item of article separately, that is, to the various subjects of suits mentioned in s. 7 of the Court-Fees Act and not to the cause of action under which all of them were claimed, the court-fees payable would have been much larger. It would thus be seen that the interpretation of "distinct subjects" in s. 17, as distinct causes of action is the most liberal.

The subsequent Calcutta decision in *Kissory Lal Roy v. Sharut Chandra Majoomdar*, (1882) 8 Cal. 593, is not opposed to this interpretation of s. 17, as that decision was based mainly on long course of practice as regards the particular claims for possession and mesne profits of immoveable property. See notes *ante* under the heading "Possession and mesne profits".

In *Rama Varma Raja v. Kadan*, (1892) 16 Mad. 415, it was held that "distinct subjects" in s. 17 referred to distinct causes of action. In *Daivachilaya Pillai v. Pannathal*, (1894) 18 Mad. 459, a suit by a reversioner for declaration that a series of alienations made by a widow were not binding on him was held to embrace distinct subjects within s. 17 as each alienation created a distinct right vesting in the alienee. In *Neelakandhan Namboodiripad v. Ananthanarayana Pattar*, (1906) 30 Mad. 61, though it was said that the phrase "two or more distinct subjects" may not admit of precise definition applicable to all cases, the court felt called upon to give a meaning to it and held that *the criterion for determining whether a suit contained distinct subjects is whether the different claims in the suit could be made the grounds of separate suits*. This is the same thing as saying that 'distinct subjects' are equivalent to distinct causes of action, since a separate suit can be brought on each cause of action. Even the very close inter-relation of the claims in the suit was deemed no bar to their being distinct subjects within s. 17. The plaintiff's predecessor had executed an Ubhayapattom deed to the defendant, mortgaging property to him and authorizing him to hold it "for ever" paying rent and other dues. Plaintiff's contention was that the terms of the mortgage entitled him to redeem it. He sued (1) to redeem the mortgage, or (2) in the alternative, if the court found that he was not entitled to redeem, then to recover from the defendant, the fees due for a renewal of the mortgage to be taken by the defendant. The court held that the alternative claims came within s. 17. "The claim for redemption is based on the alleged right of the plaintiff as mortgagor,

while the alternative relief is based on a contract for a further mortgage, which is distinct from the earlier mortgage right, though both are evidenced by the same instrument. The alternative claims are therefore distinct matters which could have been made the grounds of separate suits, and it would therefore seem reasonable to hold that they are 'distinct subjects' within the meaning of s. 17." The court also observed that "it may be that where reliefs are claimed in the alternative with reference to the same cause of action, s. 17 would not govern the case."

It is now held by all the High Courts that the words "distinct subjects" in s. 17 are equivalent to distinct causes of action, as will be seen from the large number of decisions of the several High Courts cited above.

*In re Parameswara Pattar*, 54 M. 1, their Lordships raise a doubt whether separate causes of action would invariably be the criterion for treating the claims based on them as distinct subjects under s. 17. This decision has been commented farther below in these commentaries.

**Bengal Amendment.**—The section substituted for the original section by Bengal Act VII of 1935 is simple and clear and avoids all difficulties relating to the interpretation of the words "distinct subjects" occurring in the old section.

### Cases falling under the section.

(a) *Suit for redemption.*—Where the suit is one for redemption of a *Kanom* as well as for arrears of rent, the fee is to be computed on the principal amount secured and the amount of arrears as there are really two distinct causes of action. *Rama Verma v. Kadar*, 16 M. 415; *Kannan Panikkar v. Karunakara*, 16 M. 328; *Eacharan Pather v. Appa Pather*, 19 M. 16. But where the mortgage is an usufructuary mortgage and the suit is one for redemption and for surplus profits the better view is that no additional fee is payable for the profits claimed. For a full discussion of the subject see commentary under S. 7, Cl. IX *ante*. Where in an appeal against a decree for redemption of a mortgage, the mortgagee appellant claimed interest on an additional mortgage executed in his favour over the same land, it was held that the two reliefs claimed in the appeal must be looked upon as independent and that therefore court-fee should be paid on the relief as regards interest on the additional mortgage. *Ramji Das v. Khatil*, 37 P. L. R. 89.

(b) *A suit on two or more negotiable instruments* or bonds is chargeable with a fee amounting to the aggregate amount of court fees payable on a plaint for each of the sums as default in payment of each pronote claim constitutes a distinct cause of action. *Purusottam v. Lakshmi Das*, 9 A 252; *Fatima v. Mahomed*, 96 P. R. 1895; *Nawaba Wazir Begum v. Sasi Bhushan*, 57 I. C. 685. Where several pronotes have been made on different dates by a debtor in

favour of the same payee in respect of the sums advanced by the latter to the former on different dates and the payee brings one suit against the maker in respect of his claim upon all the promissory notes, such suit embraces distinct subjects within the meaning of section 17 of the Court-Fees Act. *P. L. R. M. N. Perchiappa Chetty v. Po Kim*, 4 I.C. 289=5 L. B. R. 94 (F. B.) See also 65 M. L. J. 252 *cited infra*. Where the balance of an account has been struck and in settlement of the account, the debtor on one and the same date makes in favour of his creditor several pronotes payable on demand for sums amounting in the aggregate to the balance so found to be due from him and the payee thereafter brings one suit against the maker in respect of his claims upon all the promissory notes, such a suit embraces several distinct subjects within the meaning of section 17 of the Court-Fees Act. *P. L. R. M. N. Perichiappa Chetty v. Po Kin*, 4 I. C. 289.

Where several persons have executed separate promissory notes and mortgages to the plaintiffs as security for the sums advanced by him to the principal debtor, a suit by the plaintiff against the principal debtor and the sureties falls under this section. *Bank of Bengal v. Muthia*, 30 I. C. 705 F.B.

(c) *Suit on different transactions*.—Suit for different sums payable in respect of different transactions on different dates and appearing in different accounts, *Ramachandra v. Appaji*, Bom. P. J. 1887 p. 271, but not in respect of one continuous transaction, 46 B. 142.

(d) *Suit for partition and possession*.—The view obtaining in Patna being that where a plaintiff is not in possession and sues for partition of property, he should pray for both as he will be entitled to partition only if he is in joint possession and when he prays for both he must pay court-fee for both the reliefs sought. *Sitbaran Jha Panday v. Lokenath Missir*, 3 Pat 618=1924 Pat. 558. See commentary under s. 7 cl. iv (b).

(e) *Suit for partition and account*.—Where a prior division in status had taken place in a joint Hindu family and the members had therefore become tenants-in-common, a prayer for accounts in a suit for partition is liable to separate court-fee under s. 7 cl. iv (f) of the Court-Fees Act, in addition to the fee payable under Art. 17 of Sch. II of the Act, for the claim for partition. *Manikkam Pillai v. Murugesam Pillai*, 37 L. W. 748=64 M. L. J. 576=1933 Mad. 431. But the position is different when the family is joint and no disruption has taken place and the suit is by a co-parcener and not by a tenant-in-common. A *karta* of a joint Hindu family is not responsible to the other members of the family for the management of the joint family property in respect of the income derived therefrom, and, therefore, is not liable to render accounts. The only account the *karta* is liable for in a suit for partition is as to the existing state of the property devisable. The parties have no right to look back for relief against the past inequality of enjoyment of the



members. Therefore a suit by a co-parcener for partition of the joint family properties and for rendition of accounts by the *karta* is essentially a suit for partition, and the court-fee leviable is only for that primary relief. The mere fact that a prayer is made in the plaint for rendition of accounts by the *karta* and for recovery of the sum found due to the plaintiff cannot convert the suit into one for accounts under s. 7 iv (f) of the Act. *Jyotibati Chaudhurian v. Lakshmeshwar Prasad*, 8 Pat. 818. In this case the plaintiff was a member of a joint Mitakshara family. He claimed, besides partition of the immoveable property some money as due to him on accounting. It was contended that besides the fee for partition additional fee was payable under s. 7 iv (f). But the court negatived the contention. At p. 828 it is observed: "Ordinarily, therefore, there can be no suit for accounts against a *karta*. He cannot be asked to render an account as an agent on behalf of the other members, but only to disclose the properties including cash in his hands, and that might necessitate looking into accounts. A disclosure of property is not rendition of account, the word 'account' in a suit for partition and accounts against a *karta* being used for convenience sake, and not in the legal sense to bring it within the expression used in s. 7 (iv) (f) of the Court-Fees Act. S. 7 (iv) (f) applies to a suit for account. The test is 'can a junior member without claiming partition, bring a suit for accounts against a *karta*.' If he cannot, then the relief as to accounts becomes subsidiary to the principal relief of partition. Therefore, it will not be correct to say that whenever there is a relief asking for accounts in the sense of disclosure as to the existing state of the family finances, the suit embraces two subject-matters, namely, a partition and an account. A suit for accounts implies a liability to account."

(f) *Suit for partition free of incumbrances*.—Where in a suit by the son against his father for partition of joint family property the plaintiff included a prayer for a declaration that certain debts incurred by the father were not binding on him and that the son's share should be delivered free from the father's incumbrances, it was held that this was a distinct relief and that court-fee was payable for it under Art. 17-A. *The Secretary of State for India v. T. V. Sitarama Ayyar*, C. R. P. No. 454 of 1932 (Mad.) decided on 18-11-1932. [48 M.L.J. 688 (*Venkataramani Aiyar v. Narayanasami Aiyar*) followed.] Where in a suit for partition of joint family property, certain creditors have been made parties on the ground that the debts alleged to be due to them are not binding on the plaintiffs, and there is also a prayer in the plaint that their share should be delivered to them free of the specified debts, a separate fixed court-fee is payable as for a declaration in respect of each debt. *Perraju v. Subba Rao*, 41 L. W. 405=68 M. L. J. 376.

(g) *Suit on promissory note and on original obligation*.—Where the plaint claim on a pronote was later on amended including a claim based on the original cause of action, it was held that the amend-

ment introduced a fresh cause of action extraneous to the old and so the plaintiff should pay fresh additional court-fee on the claim. *Pethu Reddiar v. Chidambara Reddiar*, 1931 Mad. 533. (43 I. C. 560 diss. from). It is submitted that this decision may well be re-considered in view of the fact that though the causes of action may be different, the relief sought is the same *viz.*, recovery of the amount alleged to be due to the plaintiff.

(b) *Suit regarding several alienations.*—When reversioners sue to have declared invalid as against them several alienations made by a Hindu widow, a court-fee of Rs. 10, must be paid in respect of each of the alienations in question. *Daivachallaya Pillai v. Ponnammal*, 18 M. 459. But where the sons sued for a declaration that certain mortgage with possession executed by their father and a deed of further charge on the same property subsequently executed by him, were not for necessity and did not affect their reversionary interest, it was held that the subject of the suit was the alienation of ancestral property and that it constituted only one cause of action and not two and that only Rs. 20 was payable under Sch. II, Art. 22 (Punjab). *Suba Singh v. Bela Singh*, 142 I. C. 641=1933 Lah. 382. Where in a suit by a reversionary heir the plaintiff challenged certain alienations made by the last male holder, and the suit was afterwards converted into one for possession of properties with the leave of the court on the plaintiff obtaining a surrender from the widow, it was held that a separate court-fee was necessary for the declaratory relief regarding the alienations. It was doubted whether the plaintiff claiming through the person who made the alienations was not bound to get them set aside but as the question was not raised, the court did not go into the question. *Ramakrishnayya v. Seshamma*, 68 M. L. J. 369.

(i) *Suit for declaration regarding adoption and wills.*—A suit for declaration that an adoption made by a deceased person is invalid, and that two wills executed by a deceased on different dates are also invalid, is governed by Art. 17-A (iii) of Sch. II as regards the adoption and by Art. 17-A (i) as regards each of the wills and a separate court fee is payable in respect of each relief, though the property dealt with by both the wills is the same. *Veeramma v. Venkatarasamma*, 68 M. L. J. 280=41 L.W. 452=1935 Mad. 313.

(j) *Suit for recovery of properties and cancellation of document.*—In a suit by a Hindu against his brother for recovery of his share of certain properties got by him both by inheritance and bequest and for cancelling a gift in favour of the nephew the fee chargeable is the aggregate amount leviable under the Act in respect of the several claims. *Mul Chand v. Shib Charan Lal*, 2 A. 676.

(k) *Suit for specific performance.*—Where a suit is brought for specific performance of a contract of sale or in the alternative for the enforcement of a right of pre-emption of a mortgage right thereon, they constitute distinct subjects and the section is applicable as both the subjects and the causes of action are different. *Hashmatunnissa v.*

*Muhammad Abdul Karim*, 29 A. 155. See also *Fatima Begam v. Muhammed Zakaria*, 96 P. R. 1895.

(l) *Suit by landlord*.—Suit by a landlord against different sets of tenants in respect of several separate holdings for declaration that they hold the land under the Betai tenure and that they were wrongly recorded otherwise. *Lakshmanan v. Sheik Abdul Karim*, 51 I. C. 767 = 4 P. L. J. 299. So also is the converse case by several sets of tenants against their landlords for a declaration that they are occupancy tenants. *Chetru v. Muhammad Karim*, 50 I. C. 328 = 4 P. L. J. 257.

(m) *Suit for land or refund of consideration*.—Where the plaintiffs in whose favour 1st defendant had surrendered lands found that 2nd defendant claimed title to it, sued both for possession and in the alternative for repayment by 1st defendant of the consideration received by him from plaintiff, the suit embraces two distinct reliefs in respect of each of which separate court fees must be paid. *Hirderam v. Ramacharan*, 1924 Nag. 169.

(n) *Suit for ejectment and arrears of rent*.—See *Janal v. Cyril Brown*, 36 I. C. 883. But a suit for possession and mesne profits would not fall within the section.

(o) *Suit for recovery of deposits made on different dates*.—It was held that court fees should be paid on the amount of each of the deposits separately and not merely on the aggregate amount. The deposits are "distinct subjects" within the meaning of this section for the reason that though all the deposits were demanded by a single notice, the demand was not an essential part of the cause of action. *Ramaswami Chettiar v. Ramaswami Chettiar*, 61 M. L. J. 680 = 1931 Mad 712.

(p) *Suit for possession and mesne profits*.—This has been held by almost all the High Courts to contain only a single subject and thus not to come within S. 17. But the reasons given by all of them are not the same, some holding that, by long custom existing throughout the country, claims for possession and mesne profits in a suit have been regarded as constituting only one subject-matter, and the others holding that the two claims constitute only a single cause of action and, therefore, a single "subject". The Bombay High Court however holds that the suit embraces distinct causes of action and therefore distinct subjects and that S. 17 applies.

*Calcutta*. In *Kishori Lal Roy v. Sarat Chunder Mozamdar Roy*, 8 Cal. 593 (F. B.), the court held that there was only a single subject in the suit. When the suit was filed, the Civil Procedure Code of 1859 was in force. The court was inclined to think that claims for possession and mesne profits were ordinarily only one cause of action under that Code, *but the decision was based mainly on long existing custom*. The court also opined that, under the C. P. C. of 1859, for most purposes claims for possession and mesne profits were only one cause of action. See observation at page 595. "And then S. 10 enacts that for the purpose of ss. 8 and 9 a claim for possession and for

mesne profits shall be deemed to be distinct causes of action. This I think implies that a claim for possession and mesne profits when joined in one suit would but for the last section be considered as one cause of action."

Allahabad. In *Chamaili Rani v Ram Devi*, 1 All. 552 (F. B.) and *Chedi Lal v. Kirat Chand*, 2 All. 682 (F.B.), it was held that the *claims were distinct causes of action* and therefore distinct subjects within the meaning of S. 17 of the Court-Fees Act. But in *Reference under Court-fees Act S. 5*, 16 All. 401, it was held that *there was only one cause of action* and that there was therefore only one subject under S. 17 in the suit. "Now on the authorities in this court, I think I may hold that the terms *"two or more distinct subjects"* in section 17 of the Court fees Act are equivalent to two or more distinct causes of action that section 17 refers to multifarious suits, and that it is applicable to suits in which two or more distinct causes of action have been joined under section 45 of the Code of Civil Procedure..... The question which I have to decide is does section 17 of the Court-fees Act apply to a suit for possession of immoveable property, to which is added a claim for mesne profits accrued due in respect of that property? Is such a suit to be considered a multifarious suit? My answer is in the negative. Taking the instance of the present suit, I find it is one by a legatee suing under the will of the testator to recover property bequeathed to her by the will. His cause of action is the bequest in the will, coupled with the defendant's refusal to surrender possession and to repay the profits which he has wrongfully received from the estate. *In such a suit there is one and only one cause of action, not only for the immoveable property but also, for the mesne profits which latter I hold to be a claim flowing from the one cause of action, just as much as a claim for each individual portion of the immoveable property would be.* I am therefore not obliged by statute to hold that a claim for mesne profits is a cause of action distinct from that for the recovery of the land to which it relates. As to Section 44 (a) of the Code of Civil Procedure, I do not think it is in point, as it does no more than provide an exception to the general rule laid down in the main section. *I do not consider it to be an authority for holding that a claim for mesne profits is a cause of action separate and distinct from the cause of action for the recovery of the immoveable property to which the mesne profits relate.* For the above reasons, and also bearing in mind the weighty consideration set forth in the Full Bench judgment of the Calcutta High Court mentioned above, *I hold that the claim for the mesne profits in the case before me takes its origin in and flows from the same cause of action as that for the recovery of the immoveable property. The suit is not a multifarious one and is therefore not one to which section 17 of the Court-fees Act applies.* The fee paid by the applicant is sufficient". The italics are made now. It will also ~~be seen~~ from the above that the practice in the Allahabad Court in ~~this case~~ has been varying.

**Rangoon.** Claim for possession of immoveable property and for mesne profits of that property arise from one cause of action, *viz.*, the wrongful withholding of possession by the defendant, but claims for possession and rent are distinct causes of action arising as they do from distinct contracts. The former therefore constitute one subject and the latter two distinct subjects within the meaning of section 17. *A. W. Zamal v. Cyril Brown*, 36 I. C. 883.

**Patna.** The Patna High Court has repeatedly held that in matters like this it will follow the practice of the Calcutta High Court, since the territory under its jurisdiction has been carved out of the territories under the jurisdiction of the Calcutta High Court and formed till recently part of them. In *Nawratam Lal v. Stephenson*, 4 P.L.J. 195, it was held, following the decision in 8 Cal. 593, that claims for possession of immoveable property and its mesne profits are only one subject within the meaning of section 17. It was there stated that two views are possible as to the meaning of the word "subjects." One is that the word 'subject' relates back to s. 7 where the various subjects of suits are put under different heads. The other view is that the word "subject" means cause of action.

**Bombay.** In *Fulchand v. Bai Ichha*, 12 B. 98, the court has held that claims for possession and mesne profits come within s. 17, as they are distinct causes of action.

**Madras.** In (ex parte) *In re Parameswara Pattar*, 54 Mad. 1 = 59 M. L. J. 469 = 1930 Mad. 833 (F. B.), the court has held, following the above Calcutta, Patna and Allahabad decisions, that the claims for possession of immoveable property and its mesne profits constitute but one subject within the meaning of s. 17. The court had held in 38 Mad. 829 (F. B.) that the two claims were distinct causes of action and that separate suits could be brought in respect of them; and now evidently to reconcile that and fall in line with the conclusion in the Calcutta, Patna and Allahabad rulings which alone were quoted before the court, and the last of which is expressly based on the contrary view that claims for possession and mesne profits are only one cause of action, a doubt was raised "whether separate causes of action would invariably be the criterion for treating the claims based on them as distinct subjects under section 17 of the Court-Fees Act;" and it was not taken as the deciding test.

At page 2 the court also observes "ordinarily, the right or title to the land is the basis for the claim for possession of the land, as also for mesne profits, and it cannot therefore be deemed that the two claims are so disconnected, without any inter-relation, so as to form distinct subjects under section 17 of the aforesaid Act." It is submitted, the reference here to inter-relation of the claims in the suit is opposed to the ruling in *Neelakandan Nambudripad v. Anantana-rayana Pattar*, 30 M. 61, which was not quoted before the court, but where it was held that the claims in a suit though they arise from the same instrument and although they are made alternatively are

*distinct subjects within section 17 if they can be made the grounds of separate suits.* However, the court, did not think it necessary to answer the above query as it based its conclusion on long course of practice *alone*. Of course a long course of practice if uniform should not be lightly upset. See the observations of the Privy Council in the of quoted *Phulkumari Dasi's* case, 35 C. 202. When the decision in 54 M. 1 is based on practice and practice *alone*, it has to be taken that the observations regarding 'subject' are obiter. Regarding uniformity there seems however to be no such invariable practice in all the High Courts. In Bombay claims for possession and mesne profits are distinct subjects. In Allahabad the practice has not been uniform. The Allahabad and Rangoon High Courts take such a suit as containing a single subject within the meaning of s. 17 because according to them the two claims constitute only one cause of action. It is unfortunate that the decision in 54 Mad. 1 was given ex-parte, neither the Government Pleader nor the other side having appeared to contest the matter.

This F. B. decision has also been recently referred to in *The Rajah of Vizianagaram v. "The Government" represented by the Government Pleader*, 63 M. L. J. 73. Anantakrishna Iyer, J., observes thus "It should be noticed that the words used in section 17 are 'two or more *distinct subjects*' and not 'two or more *distinct causes of action*.' The distinction is important because in *Ponnamal v. Ramamirda Iyer*, 38 M. 829, a Full Bench of the court has held, that a claim for possession and a claim for mesne profits are *separate causes of action* and separate suits are maintainable in respect of the same, and that the bar of O. II, r. 2, C.P.C. would not apply to such cases. That was a ruling on the C. P. C. O. II, r. 2. Recently a Full Bench of this Court has considered this question *Parameswara Pattar, In re*, 54 M. 1." His Lordship further observed "I do not prefer to go into the several decisions cited before me which refer to causes of action, and suits based on different causes of action since, after the decision in 54 M. 1 those considerations are not conclusive in considering whether a particular suit embraces 'distinct subjects' within the meaning of section 17 of the Act."

(q) *Suit by unsuccessful claimant.* In a regular suit filed by an unsuccessful claimant under Order XXI, Rule 63, C. P. C. impleading both the judgment-debtor and the decree-holder in the suit, praying as against the one a declaration of his title to the attached property and as against the decree-holder a declaration that the property is not liable to be attached in execution of the decree, two substantial reliefs are prayed for, *Moti Singh v. Kausilla*, 16 A. 308 (F.B.). The causes of action in this case are the attachment and the adverse order passed in claim proceedings.

Where a claimant whose objection under section 278 of the Civil Procedure Code (Order XXI, R. 58) has been disallowed brings a suit and makes a judgment-creditor who was trying to execute the decree, ~~the sole defendant~~ to a suit, a claim for a declaration that the property

under attachment was the plaintiff's property not liable to attachment in execution of the decree of the defendant is a claim for only one declaration and for such purposes and in such a suit it is immaterial whether the claim is that the property is the plaintiff's and not liable to attachment or that the property is the plaintiff's as against the defendant's right to attach and that the order of attachment should be cancelled. But where the person objecting under section 278 of the Code brings the suit and makes not only the execution creditor in the attachment proceedings but also the judgment-debtor in those proceedings parties to the suit and asks for a declaration of the plaintiff's title to the property under attachment as against the judgment-debtor and also asks for a declaration in denial of the judgment-creditor's right to bring the property to sale in execution of the judgment-creditor's decree, then there are two substantial declarations asked for. *Moti Singh v. Kausilla*, 16 A. 308 (F. B.)

Where a party prefers a claim or makes any objection to the attached property in execution of a decree and fails to establish it and brings a regular suit to establish his right to his property attached, his plaint is to be treated as falling under Art. 17, Cl. 1, Sch. II of the Court-Fees Act and is chargeable with only Rs. 10 stamp notwithstanding that the plaintiff may pray in the suit to be awarded possession. *Dhonda Sakharam v. Govind*, 9 B. 20. This decision was cited with approval by the Privy Council in the leading case on the subject; *Phulkumari v. Ghansyam Misra*, 35 C. 2 2. In that case the plaintiff was in possession of immovable property which she had purchased from the 2nd defendant against whom the 1st defendant obtained in the Court of a Subordinate Judge a decree in execution of which the plaintiff's property was attached. Her claim in the execution proceedings was rejected and she thereupon brought a suit for a declaration of her right to the property and for an injunction to restrain the 1st defendant from executing his decree against it. It was held that the suit was one under S. 283, C. P. C. (now O. XXI r. 63), for which the proper court-fee was that prescribed by Art. 17 (1) of Sch. II of the Act namely Rs. 10, for "a suit to alter or set aside a summary decision or order of a Civil Court not established by Letters Patent." At page 203 of the report it is stated that the plaintiff prayed amongst other things "*that it be declared that the defendant has no right or title left in the property after sale to the plaintiff*" etc. The suit was brought against the 1st defendant the decree-holder and the second defendant the vendor to the claimant plaintiff. Though two declarations were prayed for, one against each of the two defendants still their Lordships of the Privy Council held that only one fee was payable under Art. 17 (1) of Sch. II. There is still the question as to how far this decision can cover a case where the judgment-debtor was no party to the claim proceeding and where consequently it could not be said that as between the claimant and the judgment-debtor there has been any order passed against the claimant in the claim proceedings.

In the 35 Cal. case the plaintiff was in possession of the property in respect of which he sought the declaration but in a later case that arose at Madras, *Yellama Raju v. Goteti Vigneswaradu*, 110 I.C. 554 the plaintiff sought both a declaration and possession. The dispossession in the case arose after the cause of action for declaration, viz., dismissal of the claim petition accrued. It was held that Order II, R. 2, C. P. C., was directed to securing the exhaustion of the relief in respect of a cause of action and not to the inclusion in one and the same action different causes of action even though they arise from the same transaction. See *Ponnainal v. Ramanatha Iyer*, 38 M. 829. The plaintiff could not have sued on the ground that an adverse order had been made against him on his claim petition; for that purpose it would have been necessary for him to allege a further cause of action, viz., his subsequent dispossession of sale in execution proceedings.

(r) *Suit on several mortgages.*—In view of the recent amendment to the Transfer of Property Act by the insertion of the new section 67-A therein a detailed discussion as to whether a mortgagee holding several mortgages over the same property executed by the same mortgagor can file separate suits becomes unnecessary. Section 67-A provides that the mortgagee is bound to sue on all the mortgages in respect of which the mortgage money has become due. But the principle of consolidation applied by s. 67-A of the T. P. Act has no bearing upon the interpretation of s. 17 of the Court-Fees Act, and a suit based on two different mortgages consists of two distinct subjects under s. 17. *Pollachi Government Bank, Ltd. v. Krishna Ayyar*, 41 L. W. 327 = 68 M. L. J. 316 = 1935 Mad. 262. In the case of a suit by a mortgagor for redemption of several mortgages executed in favour of the same person, there is no difficulty and s. 17 is clearly applicable as he can sue to redeem them separately or simultaneously under s. 61 of the Transfer of Property Act.

(s) *Where specific objection is taken to costs in appeal.* Where in an appeal, relief is sought against a decree for costs independently of the result of the main contest in the suit, fee is payable in the appellate court on both the reliefs. *Rowlins v. Lachmi Narain*, 44 I. C. 50 = 1918 Pat. 264. See also under Sch. I, Art. 1.

(t) A suit where on the basis of two pronotes two different amounts are claimed, one above and the other below Rs. 500, embraces distinct subjects and court-fee is payable on the former under Art. 1 and on the latter under Art. 2 of Sch. I of the Madras Court-Fees Amendment Act of 1922. *Secretary of State for India v. Ayyasami Chettiar*, 65 M. L. J. 252 = 1933 Mad. 178. This decision it is submitted, is opposed to the principle of the decision in 3 All. 108 (F. B.) followed in 29 Cal. 140.

(u) Where 73 persons filed a suit in which they prayed for a declaration that each plaintiff had a raiyati-joti interest in one out of 73 plots of land and for a declaration that a compromise decree was



void and inoperative, it was held there were in effect prayers for 73 declarations affecting 73 separate titles and separate court-fee is payable for each of the 73 prayers. *Haru Bepari v. Kshitish Bhusan*, 39 C. W. N. 1146 = 1935 Cal. 573.

### Cases not falling under this section.

(a) *Balance due on dealings.* Suit for balance due on dealings though comprising several transactions does not come under this section, as the subject-matter of the suit is the balance of the amount due. *Hira Lal v. Ganapat*, 46 B. 142 = 64 I. C. 498 = 1922 Bom. 376.

(b) *Suit for the recovery of moveable properties or money from the defendant.* *Amarnath v. Thakurdas*, 3 A. 131.

(c) *Suit to recover lands with standing trees.* *Kullappa v. Abdul Rahim*, 40 M. 824 = 39 I. C. 254.

(d) *Suit to recover the rent or profits* for several years and arising out of the same property. *Muhammad Malik v. Nirbai Bibi*, 7 A. 761. *Vide* the explanation to Order II, Rule 2, C. P. C. which runs as follows "For the purpose of this rule, an obligation and a collateral security for its performance and successive claims arising out of the same obligation shall be deemed respectively to constitute but one cause of action."

(e) *Collective suit against tenants under the Madras Estates Land Act.* The Rajah of Vizianagaram brought a suit against his tenants of the same village under ss. 30 and 193 of the Madras Estates Land Act for enhancement of rent, on the ground that prices of produce had increased. The plaintiff paid a single court-fee on the aggregate value of the suit—the amount of one year's rent of all the holdings—under s. 7, Cl. XI (b). The District Judge ordered payment of court-fees on the amount of the rent of each holding separately under s. 17 of the Court-Fees Act, as the suit embraced distinct subjects, the cause of action against each tenant being distinct and a separate suit against him being therefore maintainable. On revision, the High Court held that the suit did not come within s. 17, on the ground that the decision in *In re Parameswara Pattar*, 53 Mad. 1 (F. B.) had held that the word "subject" in s. 17 did not mean cause of action, that "subject" not being defined in the Act and its meaning being obscure, the plaintiff was entitled to the benefit of the doubt arising on the words of the Act, a taxing statute, and that there were common grounds as regards the claim against each tenant. It is submitted that the decision may perhaps be reconsidered. In the first place, the decision in 54 Mad. 1 did not rest, as stated above on the meaning of the word "subject." There is of course a doubt raised in it "Whether separate cause of action would invariably be the criterion for treating the claims based on them as distinct subjects under s. 17 of the Court-Fees Act." But the Full Bench has left the query unanswered, as no answer was necessary in the circumstances of that case. The case related to claims for possession of immoveable property and mesne profits, and the decision did not turn on

he meaning of the word "subject" in s. 17 but was based *only on the long and universal practice prevalent in the whole country* as regards the levy of court-fees for the two claims in a suit, as shown by the decisions in 4 Pat. L. J. 195, 8 Cal. 593, and 16 All. 401. Their Lordships distinctly observe: "We should *only* be guided by the long course of practice". That decision therefore, the facts of which are quite different, is, it is submitted, not applicable here. It may also be noted that that decision was *ex-parte*.

Further s. 17 cannot be dismissed as inapplicable on the ground that the word "subject" is not defined in the Act and that it is therefore of doubtful import. Although the word 'subject' in s. 17 has not been defined in the Act, courts have of necessity to explain it in deciding cases coming before them, and have to give effect to s. 17 as best as they may. Else there would be a practical abrogation of the section. All the High Courts have in practice held "subject" in the section to mean cause of action. The decisions on the point are numerous beginning from 1878, only eight years after the passing of the Court-Fees Act. In Madras the earliest decision is that in *Raja v. Kadar*, (1892) 16 M. 415 (418). Then comes *Daiyachilaya Pillai v. Pannathal*, (1894) 18 M. 459. In *Neelakandam Nambudripad v. Ananthanarayana Pattar*, (1906) 30 M. 61, though it was said the word "subject" might not admit of a precise definition applicable to all cases, the court felt called upon to explain it, and it was laid down that the criterion for determining whether a suit contained distinct subjects is whether the different claims in the suit could be made the grounds of separate suits, that is, since a separate suit can be brought on each cause of action, whether there are different causes of action combined in the suit (p. 64, last paragraph). Then there are the decisions in 1930 M. W. N. 758, *Ramaswami Chettiar v. Ramaswami Chettiar*, 61 M. L. J. 680, and C. R. P. 775/1930 (unreported), in all of which it has been laid down that if Order II, Rule 2 C. P. C. is no bar to separate suits being brought on the different claims in the suit, s. 17 would apply, and the last two of which were subsequent to 54 Mad. 1 on which the decision under reference is based. Thus, from shortly after the passing of the Court-Fees Act, courts have for a long period taken "subject" as meaning cause of action. "Where a statute uses language of doubtful import what has been done under it for a long term of years may well give an interpretation, reducing uncertainty to a fixed rule." *Vide* Broom's Legal Maxims, 9th Edn., p. 442.

Again the existence of common grounds for the several claims in a suit cannot prevent the suit from coming within the operation of s. 17. In a suit between the landlord on one side and several tenants on the other, the tenants join as plaintiffs or are joined as defendants in it under O. 1 Rr. 1 and 3 or O. 2, r. 3 or under special enactments, because common questions of law or fact arise with regard to them, or because they are jointly interested in the causes of action. To say that s. 17 can apply only if there is

no connection between the claims would mean the practical abrogation of the section. In *Lakshman Sahu v. Sheik Abdul Karim*, 4 Pat. L. J. 299, a suit by a landlord against 25 sets of tenants for a declaration that their several lands were held under the Batai system and that they were wrongly recorded as paying cash rent in the record-of-rights was held to contain 25 distinct subjects within the meaning of section 17. So also in *Chetro Mahato v. Khaja Muhammad*, 4 Pat. L. J. 297, a similar suit by 78 sets of tenants with regard to their holdings was held to contain 78 distinct subjects. See also the recent decision of the Calcutta High Court in *Haru Bepari v. Kshitish Bhusan*, 39 C. W. N. 1146 = 1935 Cal. 573. All these were suits between landlord and tenants as in the present case and there were common grounds to the claims made by or against the tenants in each suit. And yet the suits were held to embrace distinct subjects within the meaning of section 17. In a recent case *Charusheela v. Mozaffar Shaik*, 59 Cal. 997, an application was made to the Settlement Officer under section 105 of the Bengal Tenancy Act in respect of 39 tenancies or holdings situated in one village for settlement of fair and equitable rent claiming enhancement on the ground of rise in prices of staple food crops and excess rent for excess area, and for correction of the entries in the record-of-rights in respect of the Jama. A single application was made in respect of the 39 tenancies, as rule 60 (4) framed by the Bengal Government under the Act allows such grouping to be done in one application in respect of several tenancies situated in one village in the same way as section 193 of the Madras Estates Land Act allows a single suit to be instituted for enhancement or reduction of rent in respect of several tenancies situated in a village. According to the Bengal Notification No. 6954, the court-fee payable for such application is the *ad valorem* fee under Sch. I, Art. 1 of the Court-Fees Act subject to a maximum of Rs. 20. It was contended that only one fee was payable for the application. But the High Court held that the grouping of several tenancies in one application allowed under the rules was for the purposes of convenience and not for any fiscal or other purposes, that the principles of the above Patna decisions (4 Pat. L. J. 297 and 299) was applicable, as they lay down a general law which has not been altered by the above notifications of the Bengal Government and that therefore *ad valorem* fee was payable in respect of each of the 39 tenancies. Their Lordships observe at page 1002 "The petitioner asks for separate reliefs against a number of tenants and mentions certain amounts which ought to be added to their respective rents. In fact she asks for a declaration in the case of each particular tenant that his rent should not be as recorded in the record-of-rights, but according to what she stated in the petition. Such being the case, she must value her suit according to the relief she seeks against a particular tenant. This would be obvious if we take the converse case. If the 39 tenants bring a suit against the landlord for a declaration that they are not liable to pay the *hajat* and that the rent of each tenant is what he claims it to be, it would be unreasonable

o hold that such application can be made on a court-fee of Rs. 20 only, for each tenant claims a separate relief against the landlord. If in a case like that, each application is to be valued and stamped according to the relief sought by each tenant, there is no reason why a different mode of calculation of court fee should be adopted in a case where a landlord brings a similar suit against a number of tenants". It is submitted this reasoning is equally applicable to a suit under s. 193 of the Madras Estates Land Act. If under that section a number of tenants in a village join together to bring a suit against the landlord for reduction of rent, "it would be unreasonable to hold" that a single court-fee alone need be paid in it by the several plaintiffs together; and therefore in the converse case of suit by the landlord, a different mode of calculation of court-fee cannot be adopted. Thus it is clear that simply because the statute allows one suit to be brought under certain circumstances, it cannot be concluded that a single court-fee alone need be paid. Under s. 67A of the Transfer of Property Act, a mortgagee is bound (not allowed as in the case under reference under the Estates Land Act) to sue on all the mortgages in respect of which the mortgage money has become due. But yet the Madras High Court has held recently that the principle of consolidation applied by that section has no bearing upon the interpretation of s. 17 of the Court-Fees Act and a suit based on two different mortgages consists of two distinct subjects under s. 17. See *Pollachi Town Bank Ltd. v. Krishna Ayer*, 68 M. L. J. 316. In *Khasi Prasad Singh v. Secretary of State*, 29 Cal. 140, where the appellants sought to consolidate appeals arising out of 44 Land Acquisition references and pay a single court-fee on the aggregate value of all the appeals together, it was held that, having regard to the fact that the parties were the same in all the cases and that the plots of land were contiguous to one another and formed part of one estate although in the occupation of different tenants, the appeals might be consolidated into a single appeal, subject however to the payment of court fees separately under s. 17 on the value of each of the appeals. It would be profitable in this connection to see how the analogous expression "distinct matters" in s. 5 of the Indian Stamp Act which has not been defined at all in that Act, has been interpreted and applied in judicial decisions. In *Reference under the Stamp Act*, 24 Mad. 176 (F. B.) a company having obtained from the Government, the right to search for and work for minerals in a certain district, prepared an agreement to be executed for that purpose by the several landholders in that district. The agreement provided that in consideration of the executants granting to the company the right to prospect for and mine minerals in their lands, each of them should be paid a royalty of one rupee and a varying royalty or rent (specimens of which were set out). The other terms were common to all the executants such as that they should not sell the mining rights to any other persons for fifty years and should indemnify the company from claims made by other persons and so forth. It was held that the instrument dealt with several

distinct matters, namely, with agreements with several persons with regard to their separate property, and that the proper stamp to be affixed was as many agreement stamps as there were separate land-holders who were made parties to the instrument. The English Stamp Act also contains a provision which is in effect identical with s. 5 of the Indian Stamp Act and there also there is no definition of "distinct matters". In *Doe v. Day* (13 East. 241), where by an instrument a landlord purported to demise land to different tenants who signed it for different estates at the different rents set out against their signatures, but where the other terms of the agreement were the same, applicable to all the tenants, such as that the lettings to them were all from Candlemas for one year and so from year to year, and so forth, it was held that there was no community of the same subject-matter as to all the tenants, the piece of land let to each of them being different though the same terms of agreement apply to all, and that the instrument contained as many contracts as there were tenants and therefore required as many stamps. In 30 Mad. 61, it was held that the claims in a suit, *though they arose from the same instrument* and were made alternatively, were distinct subjects within the meaning of s. 17 of the Court-Fees Act, if they could be made the grounds of separate suits. The criterion here laid down for determining whether the claims in a suit are distinct or not, is not whether they arise from the same instrument or whether there is anything common to them but whether they can be made the grounds of separate suits. It is submitted that the principles of the above decisions both under the Court-Fee Act and the English and the Indian Stamp laws indicate that the decision reviewed above may well be reconsidered.

(f) *A suit for pre-emption* in respect of a sale relating to more villages than one comprises only one cause of action. Though the sale relates to different villages, the cause of action, *viz.*, the right of pre-emption that is infringed by the alienation is a single cause of action and hence the section is not applicable. *Durga Prasad v. Puranda Singh*, 27 A. 186.

(g) *Claim against a Railway Coy.* When a plaintiff, who had sustained losses by the act of a Railway company in respect of several consignments of goods clubbed them together and made a single demand on the Company, and on their failure to pay filed a suit for the recovery thereof, there is only one cause of action as there was only one notice, which formed an essential part of the cause of action and an *ad valorem* fee for the aggregate amount of claim alone could be charged and each of the items making up the total claim is not to be separately charged and the total fee made up. *The East Indian Railway Company v. Ahmadi Khan*, 78 I. C. 415=1924 Pat. 596.

(h) *Suit for specific performance and possession* do not comprise two distinct subjects within the meaning of this section. *Sundaramanjulu Naidu v. Sivalingan Pillai*, 47 M. 150=77 I. C. 542=1924 Mad. 360. See also under s. 7, cl. x.

(i) *Where the plaintiff sued for khas possession of his Zerai lands against several persons holding the same, it was held that the suit was based upon a single right and the court-fee was payable upon a single cause of action.* *Ram Narain Gir v. Gouri Shanker Lal*, 7 Pat. 402=110 I. C. 191=128 Pat. 274.

(j) *Appeal in suit for pre-emption.* In a pre-emption suit, where the vendee appealed against the pre-emption decree granted to plaintiff and denied the right to pre-empt and also that the consideration decreed to be paid to him is inadequate, it was held that there were two alternative reliefs based on exactly the same cause of action, and as only one of them could be granted, they did not constitute two distinct subjects within the meaning of section 17 and the correct court-fee is one calculated not on the aggregate of the two values but on the higher of the two. *Tekchand v. Tara Chand*, 5 L. 114=85 I.C. 556=1924 Lah. 494.

(k) *Suit for redemption.* Where the plaintiff seeks to redeem a usufructuary mortgage the court-fee is payable on the principal amount exclusive of any surplus profits realised by the mortgagee and claimed in the suit. Section 17 relates only to a suit which embraces two or more distinct subjects and does not apply to such a case. *Gopikisan v. Sarabji*, 1922 Nag. 259; *Pothanna v. Satyanandacharlu*, 60 M. L. J. 698.

(l) *Suit for declaration and injunction.* It falls under s. 7 (4) (c) and is outside s. 17 of the Act. *In the matter of Kalipada Mukharjee*, 1930 Cal. 686.

(m) Where certain creditors who had taken for their common protection a mortgage for the entire sum due to them, in lieu of their separate claims against the debtors, sued to enforce the mortgage as a whole for their common benefit, it was held that there was only one subject. *Muthuraman Chetty v. Sivasubramania Chetty*, 63 M.L.J. 316=36 L. W. 424=1932 Mad. 737.

(n) A suit for cancellation of the compromise and the preliminary and the final decrees in a previous suit does not embrace distinct subjects, and court-fee is payable on the value of the final decree only. *Kalu Ram v. Babu Lal*, 1932 All. 485 (F.B.)=54 All. 812.

**Alternative reliefs.**—A suit claiming money due on a pronote principally from the legal representatives of the executant or in the alternative from a third party who took the money representing he was the agent of the deceased, does not require separate court-fee for each relief. *Ananda v. Luxaman*, 1930 Nag. 55. Where a plaintiff prays for one of two reliefs in the alternative based on one cause of action, the higher in value of the two reliefs determines the value of the claim and s. 17 of the Act does not apply. *Rajah v. Muttali*, 1926 Lah. 467. See also *Mukhlal v. Ramdheyan*, 44 I. C. 143. But in a suit for alternative reliefs one for a declaration of the plaintiff's right to certain properties for which a fixed court-fee is payable and

the other for the recovery of several properties and accounts for mesne profits for which *ad valorem* court-fee is payable the plaintiff is bound to pay *ad valorem* court-fee for the second relief even though the valuation of the first relief is higher than that of the second. *Venugopal, In re*, 34 L. W. 837 = 67 M. L. J. 151. A suit claiming money either from the executant of the document or in the alternative from the person who had executed a security for it, does not require separate fee for each of the alternative reliefs, as there is only one cause of action under the explanation to O. II, r. 2 C. P. C. *Mothia Meera Muhai-deen v. Md. Ismail Rowther*, 1930 M. W. N. 758.

**Summary of the decisions.**—The case-law on the question of the fees payable in suits including multifarious suits could be classified as follows :

(1) **Single cause of action.**—(Note. Of course there is no multifariousness here.)

(a) *Where only one relief is prayed for.* The case is simple and a single fee is payable.

(b) *Where two or more reliefs are prayed for.*

The value of the several reliefs should be added and a single fee should be collected on the cumulative value.

(c) *Where alternative reliefs are prayed for.*

(i) *Where the reliefs are not of the same money value.*

The relief having the greater value should be charged for. The fee should be collected on that relief alone. In *Raja v. Muttali*, 1926 Lah. 467, it was held that where a plaintiff prays for one of two reliefs in the alternative based on one cause of action, the larger of the two reliefs determines the value of the claim and section 17 does not apply. See also *Muklal v. Ramdhayan*, 44 I. C. 143; *Motgavri v. Pranjivan Das*, 6 B. 302 and *Kasinath v. Govinda*, 15 B. 82 where it was held that when the plaintiff sues in the alternative for one of two reliefs the larger of the two reliefs sought determines the amount of the stamp. S. 17 does not apply to a case of alternative reliefs in respect of the same cause of action. If in such a case a *fixed* court fee is payable in respect of one relief and *ad valorem* court fee in respect of another, even though the former is valued higher than the latter the higher court-fee shall be paid. *In re Venugopalayya*, 34 L. W. 837 = 67 M. L. J. 151.

(ii) *Where the reliefs are identical in money value.*

Of course in this case it is immaterial whether one or the other relief is chosen for the levy of the fee as they are equal and the fee will be the same. But if the nature of the alternative reliefs sought is such that though they may have the same money value still for the purposes of computation, one relief is to be charged with a fixed fee under the Act and the other an *ad valorem* fee, then the question arises as to which of the two reliefs should be taken to

determine the fee leviable in the suit. It arose in *Dasarathy Mesby v. Jay Chand*, 1025 Pat. 193, where one set of reliefs was declaration and partition and the alternative relief prayed for was possession. It was held that the reliefs requiring the higher court-fee should be charged for. See also *In re Venugopal*, 34 L.W. 837 = 67 M.L.J. 151.

**(ii) Different causes of action.**

(a) *Where a single relief is prayed for.* Presumably only one fee is to be charged. It was observed in *Neelakandan v. Murthi-kandhan*, 30 M. 16 that section 17 may not apply to a case where the relief sought is one and the same though the claim is sought to be made out on distinct or alternative grounds. "It may be that where reliefs are claimed in the alternative with reference to same cause of action, s. 17 would not govern the case. That may also be so where the relief claimed is one and the same though the claim is sought to be made out on distinct or alternative grounds. It is however different where the reliefs are distinct though both are evidenced by the same instrument." But see the decision in *Pethu Reddiar v. Chidambara Reddiar*, 1931Mad. 533, and the comments thereon at page 330 *supra*.

**(b) Where two or more reliefs are prayed for.**

There is a clear case. The fee for each reliefs should be separately charged for.

**(c) Where alternative reliefs are prayed for.**

The court-fee is payable as in the case (b) above. The total of the fees chargeable on each relief should be levied.

The operation of section 17 of the Court-Fees Act is not necessarily confined to cases where cumulative reliefs are claimed. Alternative claims, forming different matters which could have been made the grounds of separate actions are "distinct subjects" within the meaning of the section, although they arise out of the same instrument and a suit for enforcing such alternative claims ought to be valued for the purpose of court-fee as also of jurisdiction on the aggregate value of such reliefs. *Nelakantan v. Murthi Kaundhan*, 30 M. 61. But in the headnote of this case, it is noted that the decision in 15 B. 82 is not approved. That does not appear to be quite accurate. The Bombay decision applies to a case where there is a single cause of action but here there are two different causes of action. The test as laid down in 1924 Pat. 596 and also in the decision of 30 M. 61 does not dissent from the view at all. The decision in *Hashmat-Misra Begum v. Muhammad Abdul Karim*, 29 A. 155, is also an authority for this position. The plaintiff came into court claiming in the first place specific performance of an alleged agreement to sell to him certain immoveable property, and secondly in the alternative, the enforcement of a pre-emption right in respect of a mortgage of a portion of the property executed by one of the defendants in favour of the other. It was held that the suit was within the meaning of section 17 of



the Court-Fees Act, 1870 a suit embracing two distinct subject-matters and therefore chargeable with the court-fee assessable upon each alternative relief separately. This decision might appear to run counter to the decision in 30 M. 61 as that decision lays down that where a single relief is prayed for, though it arises out of different causes or action, a single fee is to be levied. The case in 29 A. 155 really contemplated two different reliefs, one for specific performance of a sale and the other for pre-emption of a mortgage. Even the two reliefs are not identical, leave alone the question that they also flow out of two different causes of action. It is on a consideration of want of identity of the reliefs sought that the ultimate decision in 29 A. 155 rested and it could not therefore be taken to take a different view from that of the decision in 30 M. 61. See also 6 I. C. 715 (Punj.) and *Hirdeshan v. Ramcharan*, 1924 Nag. 169 = 78 I. C. 703. In C. R. P. 775 of 1930 (Madras, unreported.) where the plaintiff sued the Zamindar, who had granted him a permanent lease of land for a premium paid, and another defendant who claimed title to the land and was in possession, the plaintiff's claim against the former being for refund of the premium amount and that against the latter being for possession of the land alternatively, it was held that s. 17 applied.

**Consolidation of suits and appeals.**—Except in the case of appeals to His Majesty in Council the C. P. C. contains no express provision to consolidate suits and appeals. *Hukum Chand v. Kamalammal*, 33 C. 927; *Nanda Kishore v. Ram Golam*, 40 C. 955. As regards P. C. appeals, Order 45, Rule 4 provides as follows "For the purposes of pecuniary valuation, suits involving substantially the same questions for determination and decided by the same judgment may be consolidated; but suits decided by separate judgments shall not be consolidated, notwithstanding that they involve substantially the same question for determination." See also *Raja Rajeswari v. Arunachellam*, 73 I. C. 217 = 44 M. L. J. 424. The Calcutta High Court has held in *Moosa Soleman v. The Secretary of State*, 32 C. W. N. 776, that certain appeals may be consolidated for the purpose of *hearing them* but court-fees must be paid separately for each according to the provisions of the Court-Fees Act. Where the plaintiff sued for sale upon a mortgage, the court of first instance granted him a simple money decree. Both parties preferring appeals against that decree, the plaintiff's appeal was dismissed and the defendant's appeal was allowed, with the result there was a total dismissal of the suit. The plaintiff preferred two second appeals against these two appellate decrees. It was held that he was liable to pay the full court-fee on each of the appeals and the court was not empowered under the Court-Fees Act to consolidate the two appeals into one. *Shib Dayal v. Meharban*, 58 I. C. 230. But see *Sanyasi Lingam v. Gavaramma*, 16 M. L. J. 411, in which it was held that when two appellate decrees have been passed on appeals from one decree, the second appeals could be consolidated into one.

**Inherent powers of Court.**—An appellate court has inherent powers of consolidating appeals before it and the provisions of section 151 of the Civil Procedure Code may be invoked for that purpose. Courts should see whether a case is a fit one for consolidation, as if, consolidation is allowed, the Crown will be deprived of the public revenue, by the reduction in the court fees payable by the appellants. The fact that in an arbitration proceedings the award was split up ought not to be allowed to prejudice the right of the appellant to treat the award as one and they would be equally entitled to consolidation. *Gangu Naidu v. Deputy Collector of Madras*, 34 M. L. J. 279.

Where 78 ryots instituted a suit in respect of 78 holdings (1) for declaration that the rents entered in the Khalian were higher than the rents actually payable; and (2) for a declaration that 59 rent decrees which the landlord had obtained at the higher rents were contrary to law, it was held that a court-fee of Rs. 10 should have been paid in respect of each of the 137 causes of action namely 78 declarations that the rents entered in the Khalian were wrong and 59 declarations that the decrees obtained were contrary to law. *Chetheru v. Khaja*, 4 P. L. J. 297. This was followed by *Lachman v. Sheikh Abdul Karim*, 4 P. L. J. 299.

In *In re Perumal Nadar*, 109 I. C. 651 (Madras) it was held by Devadoss, J., that the High Court has inherent powers to consolidate appeals and allow a single vakalatnama to be filed in them and the decisions in *Kasi Prasad Singh v. Secretary of State for India*, 29 C. 140, *In the matter of "Falls of Ettricale"*, 22 C. 511, *Vengu Naidu v. Deputy Collector of Madura*, 45 I. C. 468 = 34 M. L. J. 278, were relied on. It was however further held that the appellate Court must know what is the relief granted against the defendant in each case and in order to draft a decree in appeal, it is essential that the court should have the decree of the lower court before it, and therefore, the parties are not relieved of the obligation to produce a properly stamped decree in each of the appeals filed by them. The Court may no doubt dispense with the production of the copies of the judgment in all but one as it is a common judgment in all the cases but the decree is not a common decree and when a decree is appealed against it ought to be produced along with the memorandum of appeal and it must also be stamped as required by law."

The question again came before Devadoss, J., of the High Court of Madras in C. R. P. Nos. 1517 to 1519 of 1927 (Madras High Court). His Lordship observed thus "that the court has power in proper cases to consolidate into one a number of cases in which the same question is involved cannot be seriously disputed."

The decision of Devadoss, J., has been overruled by the Full Bench decision in *Maharaja of Venkatagiri, In re*, 53 Mad. 248 (F.B.) where the question arose whether where 118 suits were filed against 118 sets of tenants under s. 77 of the Estates Land Act, and on the ~~ground~~ of same, 118 appeals were filed which too were dismissed, a

single Second Appeal could be filed against the decree in all these 118 appeals and whether only one court-fee on the aggregate value of the claims in the 118 suits will be proper. The Full Bench held that the appeals could not be consolidated so as to allow one single court-fee to be paid on the aggregate value of all the second appeals or to prosecute them all on a single Vakalatnama.

“The Maharajah of Venkatagiri who is the petitioner filed separate suits against his tenants for rent on the ground that they raised a second crop. The tenants defended the suits on the ground that they did not raise a second crop and that the suits were barred by limitation. The suits were tried together and the witnesses examined were treated as witnesses in all the suits. There was one judgment but separate decrees were passed. Separate appeals have been filed in the High Court. The present application is to consolidate the appeals so filed for the purpose of (1) treating the court-fee payable as the court-fee on the entire value of the suits and (2) filing only one vakalat in all the suits, and the question is whether such consolidation is permissible.

As to the inherent power of the Court to consolidate suits or appeals there can be no question. *Vengu Naidu v. The Deputy Collector of Madura Division*, 34 M. L. J. 279; *Narayan Vithal v. Janakbai*, 39 Bom. 604; *Kalichand Dutt v. Sarja Kumar Mondal*, 1917 C. W. N. 526; *Dharamdas v. Dharamdas*, 41 I. C. 182 and *Kasi Prasad Singh v. Secretary of State for India in Council*, 29 Cal. 140. But the point which we have to determine is whether a consolidation can be effected which will conflict with the specific provisions of the Court-Fees Act and the Civil Procedure Code as to the filing of appeals against the decrees of lower Courts.

Consolidation of suits or appeals may be for various purposes, and the main object of consolidation is to prevent unnecessary delay in the disposal of suits or appeals and also to prevent unnecessary costs being incurred (*Martin v. Martin & Co.*, (1897) 1 Q. B. 429 and *The Creteforest*, L. R. 1920 Prob. D. III). The costs saved are costs as between party and party and cannot mean stamp duty payable to the Crown under specific enactments.

Section 4 of the Court-Fees Act enacts that no document of any kind specified in the first or second schedule to the Act as chargeable with fees, shall be filed, exhibited or recorded in, or shall be received by, any of the High Courts in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence, or in the exercise of its jurisdiction as a Court of reference or revision, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the above schedules as the proper fee for such document.

Section 6 contains a similar provision as regards court-fee payable in respect of suits or appeals in the subordinate courts.

Where therefore there is nothing either in the Code or in any other enactment to prevent this course from being adopted, Courts have power to consolidate; but I do not think such power can be extended in a manner to conflict with the provisions of any enactment like the Court-Fees Act or the express provisions of the Civil Procedure Code as regards the filing of appeals.

It seems to me that consolidation can only be asked when there are suits or appeals properly instituted and on the file. Where the legislature lays down certain requirements necessary to be satisfied before it can be seised of the suit or appeal, *e.g.*, a plaint or memorandum of appeal on a proper stamp, it is difficult to see how an order can be passed consolidating suits or appeals for the purpose of getting over the stamp duty payable.

There are two classes of cases in which consolidation can be ordered. One relates to cases where although one suit could have been filed against several defendants in the lower court, the party has not chosen to do so but has filed separate suits, and the other relates to cases where although one suit could not have been filed the questions for the determination are the same and it will save cost and expense to consolidate the suits either in the lower court or in appeal. In the former case the provisions of Section 17 of the Court-Fees Act are imperative because in the case of a suit embracing two or more distinct subjects, the plaint or memorandum of appeal should be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing each of such subjects would be liable under the Act. In cases where one suit could not have been filed, it is difficult to see how the aggregate value of the subject-matter in all the suits can be treated as the amount on which court-fee has to be paid. In cases which do not fall under Section 17, there is no question of treating the aggregate value of the various suits or appeals as one for the purpose of court-fee, as the provisions of the Court-fees Act are specific and state that each of such suits should bear the court-fee prescribed by the Schedules to the Act.

Reference has been made to *Kashi Prosad Singh v. Secretary of State for India in Council*, 29 Cal. 140. It was a case under the Land Acquisition Act and it was held that as the parties were the same in all the cases and the plots of land were contiguous and formed part of an estate although in the occupation of different tenants who were not parties to the appeals, the appeals should be consolidated and the court-fee paid upon the value of the consolidated appeals under Section 17 of the Court-Fees Act subject to the maximum of Rs. 3,000. The maximum of Rs. 3,000 has however now been omitted and court-fee has to be paid *ad valorem* without any maximum limit so that consolidation cannot in any view affect the court-fee.

In *Vengu Naidu v. The Deputy Collector of Madras Division*, 34 M. L. J. 279, there was an application to consolidate several appeals

filed from the awards passed by the District Judges of Madura on references made to him by the Land Acquisition Officer. The District Judge treated all the references as 47 separate petitions and passed a separate award on each of them although they were all tried together and disposed of in one judgment. Phillips, J., held that the power of consolidation was inherent in the court although no express power was conferred by the Code and followed *Enayetollah v. Radha Charn Roy*, 15 W. R. 359; *Kashi Prasad Singh v. The Secretary of State for India*, 29 Cal. 140; *Fink v. The Secretary of State for India*, 34 Cal. 599; *In re Dorabji Cursetji*, 10 Bom. L. R. 675 and *In the matter of the Falls of Ettricale*, 22 Cal. 511. The learned Judge considered the objection that consolidation would affect the revenue and says the fact that only one notice was sent under section 12 and one objection filed under section 13 *prima facie* indicated that there was only one award the correctness of which had to be determined by the District Court. He was of opinion that the fact that the award contained several items did not make any difference.

I do not think that Land Acquisition cases afford any safe guide as the considerations which exist in such cases and which the learned Judge points out are absent in ordinary suits and it is doubtful whether having regard to the amendment of the Land Acquisition Act in 1921, Section 26, clause (2) of the Act, the same considerations can now exist.

I may also point out that the same learned Judge refused consolidation in S. R. No. 828 of 1928 (Civil Miscellaneous Petition). There were two suits filed for partition in the District Munsiff's Court and second appeals were filed. An application was put in that the Second Appeals should be consolidated on the ground that the two suits must be deemed to be one suit and consolidated for purposes of appeal. The learned Judge refused consolidation on the ground that the suits did not relate to the same subject-matter."

**Maximum court-fee.**—Article 1 Schedule I of the Act sets out the amount of fee chargeable on a plaint or memorandum of appeal not otherwise provided for. In setting out the *ad valorem* fee leviable it has a proviso to the effect that "the maximum fee leviable on a plaint or memorandum of appeal shall be Rs. 3,000." But this has been the subject of several provincial amendments, as a result of which the maximum has been increased in Bengal and Bombay to Rs. 10,000 and entirely omitted in Bihar and Orissa, Madras and the Punjab. The result is that in the Provinces where there are no Provincial Acts, the maximum fee leviable is Rs. 3,000, and where there are local amendments there is a higher figure fixed as a maximum in Bengal and Bombay and no maximum limit is fixed in the Provinces of Bihar and Orissa, Madras and the Punjab. In cases where a maximum fee is fixed, section 17 must be read subject to such proviso of Article 1 Schedule I of the Act. It was contended in *Raghobir Singh v. Dharam Kuar*, 3 A. 108 (F.B.) that the proviso is applicable

only where the fee is not otherwise provided for (*vide* column 1 of Article 1 of Schedule I) and consequently that the existence of section 17 takes the cases to which that section applies out of the scope of the Proviso. Regarding this contention their Lordships observed thus "Section 17 of the Act makes no provision of this kind for the proper fee to be charged. It merely lays down a general rule that where a suit embraces two or more distinct subjects the plaint shall be charged with the aggregate amount of fees to which the plaints in suits embracing separately each of such subjects would be liable under the Act. Section 17 does not pretend to fix the amount of the fee but on the other hand expressly refers to other parts of the Act for the amount, that is to the Schedules, which alone deal with the amount. The general rule in Section 17 becomes necessarily governed by rules as to the amount of the fee to be found in the Schedules and among them by the Proviso to Article 1 Schedule I limiting the amount of fee. Sections 7 and 8 specifically declare the rates at which relief by suit of a particular class or character, therein defined, is to be calculated. The category of likely causes of action is, as far as can be, exhausted, but in order to guard against the possibility of cases arising for which no provision has been made, provision is made in Art. 1, Schedule I. The words 'not otherwise provided for in this Act' occurring in Article I, Schedule I, relates back to sections 7 and 8 and not to section 17. Further if the Article is to be applied, it must be applied in its entirety, and with the proviso which it contains, fixing a maximum fee leviable—a proviso which is in no way inconsistent with the application of the general rule contained in section 17 but which governs its application."

**Para 2 of the section.**—This relates to the converse case of splitting up of a suit into several suits. "Section 9, C. P. C.", referred to, relates to the Code of 1859. Section 158 of the C. P. C. 1908 provides as follows: "In every enactment or notification passed or issued before the commencement of this Code in which reference is made to or to any Chapter or Section of Act VIII of 1859 or any Code of Civil Procedure or any Act amending the same.....such reference shall so far as may be practicable, be taken to be made to this Code or its corresponding part, Order, Section or Rule." Therefore "Section 9 C. P. C." must now be read as "Order II, r. 6 Schedule I of the Code of Civil Procedure (V of 1908)." That empowers a court to order separate trials where it considers that any causes of action joined in one suit though not bad for multifariousness cannot be conveniently tried or disposed of together.

18. When the first or only examination of a person who complains of the offence of wrongful confinement or wrongful restraint, or of any offence other than an offence for which police officers

Written examination  
of complainants.

may arrest without a warrant, and who has not already presented a petition on which a fee has been levied under this Act, is reduced to writing under the provisions of the Code of Criminal Procedure the complainant shall pay a fee of eight annas, [*one rupee* Bengal, Madras. and the Punjab, *twelve annas* Bihar and Orissa and United Provinces] unless the Court thinks fit to remit such payment.

#### COMMENTARY.

**Provincial amendments.**—The fee of 8 annas has been raised to one rupee in certain Provinces and they are noted in the body of the section.

**Complaint.**—Court-fee is payable on complaints where (1) a previous petition with court-fee has not been already presented and

(2) the offence complained of is a non-cognisable one or

(3) the offence (though a cognisable one) is wrongful restraint or wrongful confinement.

It may be noticed that Art. I (b) of Schedule II (Table of Fixed Fees) prescribes the levy of court-fees of 8 annas on complaints of non cognisable offences. In the case of all other cognisable offences except two *viz.*, wrongful restraint and wrongful confinement no fee is leviable on a complaint. Bombay H. C. Cr. Ruling 4th April 1873.

Wrongful restraint—See section 341 I. P. C.

Wrongful confinement—See section 342 I. P. C.

**Cognisable offences.**—Under Sch. II Art. 1 (b), written complaints about cognisable offences are exempt from court fee. But under this section oral complaints of two of such offences *viz.*, wrongful complaint and wrongful restraint when reduced to writing by the Magistrate are liable to stamp duty. This is an anomaly. The reason seems to be this. Under the Court-Fees Act of 1867, in Sch. II, Art. 1 (b) complaints of wrongful confinement and restraint were liable to stamp duty, but in the Act of 1870 the portion relating to them was deleted, but the corresponding portion in S. 18 was not deleted.

**19. Nothing contained in this Act shall render the following documents chargeable with any fee :—**

Exemption of certain documents.

(i) Power-of-attorney [*or other written authority—BENGAL*] to institute or defend a suit when executed by

an officer, warrant-officer, non-commissioned officer or private of Her Majesty's army not in civil employment.

(ii) [*Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*]

(iii) Written statements called for by the Court after the first hearing of a suit.

(iv) [*Rep. by the Cantonments Act, 1889 (XIII of 1889).*]

(v) Plaints in suits tried by Village Munsifs in the Presidency of Fort St. George.

(vi) Plaints and processes in suits before District Panchayats in the same Presidency.

(vii) Plaints in suits before Collectors under Madras Regulation XII of 1816.

(viii) Probate of a will, letters of administration, [and, save as regards debts and securities, a certificate under Bombay Regulation VIII of 1827], where the amount or value of the property in respect of which the probate or letters or certificate shall be granted does not exceed one [*two—Bengal*] thousand rupees.

(ix) Application or petition to a Collector or other officer making a settlement of land revenue, or to a Board of Revenue, or a Commissioner of Revenue, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interests therein, if presented previous to the final confirmation of such settlement.

(x) Application relating to a supply for irrigation of water belonging to Government.

(xi) Application for leave to extend cultivation, or to relinquish land, when presented to an officer of land-revenue by a person holding under direct engagement with Government, land of which the revenue is settled, but not permanently.



(xii) Application for service of notice of relinquishment of land or of enhancement of rent.

(xiii) Written authority to an agent to distrain.

(xiv) First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend either to give evidence or to produce a document, or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.

(xv) Bail-bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise.

(xvi) Petition, application, charge or information respecting any offence when presented, made or laid to or before a Police-officer, or to or before the Heads of Villages or the Village Police in the territories respectively subject to the Governors in Council of Madras and Bombay.

(xvii) Petition by a prisoner, or other person in duress or under restraint of any Court or its officers.

(xviii) Complaint of a public servant (as defined in the Indian Penal Code), a municipal officer, or an officer or servant of a Railway Company.

(xix) Application for permission to cut timber in Government forests, or otherwise relating to such forests.

(xx) Application for the payment of money due by Government to the applicant.

(xxi) Petition of appeal against the chaukidari assessment under Act No. XX of 1856, or against any municipal tax.

(xxii) Application for compensation under any law for the time being in force relating to the acquisition of property for public purposes.

(xxiii) Petitions presented to the Special Commissioner appointed under Bengal Act No. II of 1869 (to

*ascertain, regulate and record certain tenures in Chota Nagpore).*

(xxiv) Petitions under the Indian Christian Marriage Act, 1872, sections 45 and 48.

(xxv) *Petitions of appeal by Government servants or servants of a Court of Wards against orders of dismissal, reduction or suspension; copies of such orders filed with such appeals, and applications for obtaining such copies—* New paragraph added in Bengal by Act VII of 1935.

#### COMMENTARY.

#### Legislative Changes

*Clause VII.* The words "and save as regards debts and securities, a certificate under Bombay Regulation VIII of 1827" were substituted for the original words "and certificate mentioned in the First Schedule to this Act annexed No. 12" by the Succession Certificate Act of 1889, S. 13 (2).

*Clause XXIV* was substituted by Act XV of 1872 (The Indian Christian Marriage Act) for the original clause "Petitions under XIV and XV Vic. Ch. 40 S. 5 or under Act V of 1852, S. 9."

#### Clause I.

*Power of attorney.* It is provided that a power of attorney to institute or defend a suit when executed by a military officer and not in civil employ is exempt from court fee. Schedule II, Art. 10, provides that Mukatnama or Vakalatnama when presented for the conduct of any case is to be stamped as provided for therein. But a power of attorney to institute or defend a suit is not in the nature of a Mukatnama or Vakalatnama and cannot fall under Art. 10 of Schedule II. Powers of attorney authorising a person to institute or defend a suit are presented and returned after reference. Of course it is a different matter where such documents are filed as exhibits in a case. But when they are produced simply as vouchers to enable a person to institute or defend a suit on another's behalf, no court-fee is payable in any event. Under those circumstances, it is somewhat difficult to understand why the Legislature has made specific mention of such documents executed by military men as being exempted from court-fee thereby implying that such documents executed by non-military men are liable, while as a matter of fact they are not so liable in any case. See also S. 2 (21) of the Stamp Act and further commentaries under Art. 10, Schedule II of this Act.

#### Clause III.

The wording of this clause is somewhat misleading. "Order VIII, r. 1, G. P. C. provides that the defendant *may*, and if so required

by the court *shall, at or before the first hearing* \* \* \* present a written statement." And what is a "first hearing" is not defined in the Code. But it has been held to be the hearing when issues are framed: Art. I, Schedule I of the Court-Fees Act makes written statements pleading a *set-off* or a *counter-claim*, liable to be stamped. This has to be read with clause 3 of this section; and it is only a written statement when there is no counter-claim or set-off that is exempt. But, the wording of the clause makes it appear, that it is only such written statements as are called for by court after the first hearing, that are exempt under this section. What about those written statements that contain no claim for set-off, and are filed without being called for by court and *before* the first hearing of a suit? They too are not liable to the payment of court-fee. The Court-Fees Act is a fiscal enactment and unless a particular document is specified in the Act as liable for the payment of court-fee, no court-fee could be collected in respect of same. *Nagu v. Yeknath*, 5 Bom. 400; *Cheraguli v. Kadir Mahomed*, 12 C. L. R. 367. According to Art. 1, Schedule I only such written statements as contain a counter-claim or a claim for set-off that are so taxable. Hence all other written statements, whether called for by court or not, whether filed before at or after the first hearing, are also not taxable. It is in this connection, it appears that the restricted wording of Cl. 3 is rather misleading. Again, in a case where the defendant has filed no written statement but the court called for one under O. VIII, r. 1, C.P.C., and a written statement is then filed containing a counter-claim or set-off, it might be contended that the written statement is not liable to court-fee, if this clause 3 is taken to govern the provisions of Art. I, Schedule I of the Act. But that cannot be the intention of the Legislature. On the whole it appears desirable to delete clause 3. See Fees Rules of the Madras High Court, Appendix II, items 3 and 4.

Written statements filed in miscellaneous cases such as one in answer to an application by the Official Liquidator of a Company to set aside transfers as fraudulent are exempt from court-fees. *Indian States Bank, Ltd. v. Rukmini Rani*, 1934 A. L. J. 881=148 I. C 642=1934 All. 332.

### **Set-off and counter-claim.**

Written statements containing such pleas must be stamped. For decisions bearing on this topic see under Art. I, Schedule I.

### **Answer to a claim of set-off.**

These partake of the nature of written statements and need no court-fee. Order VIII. R. 6 (3) C. P. C., provides that the rules relating to a written statement by a defendant apply to a written statement in answer to a claim of set-off. But curiously a fee of Rs. 10 is provided for such an answer to a written statement containing a counter claim by the Original Side Rules of the High Court of Madras.

### Written statements in certain cases.

**Partition suit.** Defendants praying for division of shares *inter se* need not pay court-fee on their written statements for that relief. *Hem Chandra v. Prem Mahto*, 90 I. C. 789=1926 Pat. 154. This view was approved in a recent case in the High Court of Madras, *Venkatasubbamma v. Ramanadhayya*, 55 Mad. 975=63 M. L. J. 845=1932 Mad. 722. The question for decision was whether in a suit for partition, one of the sharers who asks for a decree for his share, should have paid court-fee to make his claim effective. Their Lordships distinguished the case in 24 Bom. 128 relied on by counsel for the second defendant, on the ground that that was a case in which the High Court delivered judgment a month after the passing of the Stamp Act II of 1899 and that as it contained no reference to that Act, the remarks of the High Court must have been made apart from the Stamp Act. The view expressed in 90 I. C. 789 was approved to the effect that the defendant in a partition suit had merely to ask for his share and it was then open to the Court to order the defendant's share also to be separated and the right of the Crown to some revenue on the claim of the defendant would be satisfied by the direction in the Stamp Act that the decree as finally drawn up should be stamped as an instrument of partition and except that stamp duty, no other duty as Court-fee was payable by the defendant in such a suit. In this connection their Lordships dissented from the decision in 6 L. W. 448.

The Sind Court has held that a relief prayed for in the written statement in a suit for partition of certain joint property claiming that the plaintiffs had been managing the property and recovering the rents and that they should give accounts of the rents, should be valued and the necessary Court-fees paid. *Shaganlal v. Hariram Tiloomal*, 1933 Sind 304.

**Objections to award.** Objection to an award must be stamped. It is not construed as a written statement and does not fall within the exemption. See *Adamali v. Abdulali*, 107 I. C. 223=1928 Sind 87.

### Clause V.

**Plaints in suits that are actually tried by village munsifs in the Madras Presidency.** It is not sufficient that a suit has been instituted in a Village Munsif's Court. It must be actually tried there.

### Clause VIII.

The minimum has been raised from Rs. 1,000 to Rs. 2,000 by the Bengal Court-fees Amendment Act IV of 1922. This clause is obviously redundant in view of the provision in Art. 11 of Sch. I of the Act which provides for the levy of fees only where the value exceeds Rs. 1,000. It is an accepted proposition of law that no document is chargeable with fee unless it is specifically provided for and where there is no provision to charge probates, etc., where the value is

below Rs. 1,000, there is no necessity to provide for an exemption for values below the amount. See further commentary under Art. 11 of Sch. II.

### Clause IX.

This clause is held not to apply to *Jamabandi* petitions. *Proceedings of the Revenue Board*, Madras, No. 5232 dated 10-8-1870 and No. 269 dated 17-3-1888.

### Clause X.

For reasons for the exemption. See Gazette of India, dated 26-2-1870.

### Clause XI.

*Person holding under direct engagement with Government.* The clause refers to the case of ryotwari as opposed to zamindari tracts. See also Appendix on Reductions and Remissions of court-fees.

The exemption granted under this section does not apply to special *Poromboke* lands as roads, tanks, etc. Madras Board's Proceeding, No. 907, dated 26-10-1888.

### Clause XIII.

*Bengal.* The procedure for recovery of rent by distraint is laid down in Ch. XII of the Bengal Tenancy Act, VIII of 1885.

*Madras.* See Chapter VI of the Madras Estates Land Act, I of 1908.

### Clause XV.

This has to be read with Art. 6 of Sch. II of the Act. See further commentaries under that Article and the Appendix under Reductions and Remissions.

### Clause XVII.

*"Of any court."* The use of these words shows that the exemption applies equally to both civil and criminal courts.

*Judgment-debtor.* Where a judgment-debtor under arrest in execution of a decree put an application to file his schedule in insolvency, the memorandum of appeal against the rejection of such an application is exempt from court-fee. *Kali Prasad v. Gisborne & Co.*, 10 C. 61.

*Presentation of petition by pleader.* Appeal presented by pleader on behalf of prisoner need not bear any court-fee. *Emperor v. Maruti*, 45 I. C. 158; *In re Court-Fees Act*, 1924 Rang. 160. Even a petition filed by a pleader for an adjournment on account of his personal convenience is also deemed to be one 'by a prisoner' and need not be stamped. *Bhaya Lal v. Emperor*, 1930 All. 261.

*Bail application.* An application made by the Advocate of a prisoner in duress or under restraint is an application made by the

prisoner himself. It is not liable to stamp fee. *Jagannath Kobar v. Emperor*, 65 I. C. 553=4 U. B. R. 72.

### Clause XVIII.

"*Complaint.*" It has been defined by the Code of Criminal Procedure, Section 4 (k) as meaning the allegation made orally or in writing to a Magistrate with a view to his taking action under this Code, that some person whether known or unknown has committed an offence, but it does not include the report of a police officer."

### *Public servant.*

For the definition of the term see Section 21 of the Indian Penal Code. S. 2, C. P. C. also.

### *Municipal Officer.*

The separate mention of a municipal officer in the clause in addition to the words "public servant" makes it appear that a municipal officer is not a public servant. But clause 10, Section 21, I.P.C., is comprehensive enough to include a municipal officer within the definition of a public servant. The illustration given under the clause is "A Municipal Commissioner is a public servant." *A fortiori*, a municipal servant is a public servant. Further, Explanation I to the Section is to the effect that "persons falling under any of the above descriptions are public servants *whether appointed by the Government or not.*" The words "municipal officer" in the clause seems therefore to be redundant.

### *Complaint by Municipal Officer.*

No fee is leviable. *Queen Empress v. Khajaboy*, 16 M. 423.  
*Cantonment Authority.*

The Government of India have ruled that a cantonment authority is not "a public officer" as defined in the Cr. P. C. The Government therefore direct that process fees and diet money to witnesses should in future be collected from the Cantonment Authority in all cases of prosecutions by the Police on their behalf. A Cantonment Authority is exempt from the payment of court-fees on complaints under S. 19 (xviii) of the Court-Fees Act as it is a public servant as defined in S. 21, I. P. C. G. O. 3364 *Mis. dated 30th August 1929.*

### Clause XX.

Application for refund of costs deposited for preparation of a Privy Council appeal should be stamped with a court-fee of Rs. 2 and is not exempt. *Haridasdi v. Gopesdwar*, 1923 Cal. 599=27 C. W. N. 646. It was contended in this case that the application was one for payment of money due by Government to the applicant and came within the exemption in this clause. The money was lying in the Bank to the credit of the Registrar of the High Court. It was held in the circumstances that the application was not for payment of money due by the Government to the applicant within the meaning of this clause and that on the other hand it was an application presented

to the High Court and consequently came within the provisions of Sch. II, Art. 1 (d) and was chargeable with a fee of Rs. 2. It was observed that it was also the established practice of the Calcutta High Court to charge such applications with a fee of Rs. 2. This decision was referred to and distinguished in *In the matter of Bal-kishun*, 54 All. 790, where the application was under s. 13 for refund of court-fee, and it was contended that since the Local Government had issued a Notification reducing to a graduated scale the fee due under Sch. II, Art. 1 (d) for applications for refunds of civil court deposits, it was obvious that fee was due under Sch. II, Art. 1 (d) for applications for refunds under s. 13 and that the exemption did not apply. But it was held that the incidents of deposits made by parties in civil suits or for the preparation of Privy Council appeal books were quite different from refunds of court fees under s. 13, which provision is mandatory in its terms which lay down that "the appellate court shall grant to the appellant a certificate, authorising him to receive back from the Collector the full amount of the fee paid," that the money paid for court-fee is money paid outright to Government and being refundable under s. 13 is money due by Government and that therefore the exemption in s. 19, clause xx applied. It was observed that though the Notification did no doubt show that court-fees are chargeable on applications for payment of deposits made by parties to civil suits, "the language of s. 13 supports the view that no court-fees are chargeable on applications for refund under that section. It is laid down that 'the full amount of fee' is to be paid. In the present case, the applicant claims a refund of Rs. 3-12-0. If he has to pay a fee of Rs. 2 in order to claim Rs. 3-12-0, I do not think he can properly be said to recover 'the full amount of fee'." See also *Jag Narain Pandey v. Mata Badal*, 1932 A. L. J. 601 = 1932 All. 590.

### Clause XXII.

Application for compensation under the Land Acquisition Act, is not liable to court-fee. See *Gazette of India*, dated 26-2-1870.

### Clause XXV (Bengal).

This is newly added in Bengal by Act VII of 1935. Cf. the notification of the Government of Madras remitting court-fees on such appeals.

## CHAPTER III A.

### PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF ADMINISTRATION.

**19-A** Where any person on applying for the probate of a will or letters of administration has estimated the property of the deceased to be of greater value than the same has afterwards proved to be, and has consequently

Relief where too high a court-fee has been paid.

paid too high a court-fee thereon, if within six months after the true value of the property has been ascertained, such person produces the probate or letters to the Chief Controlling Revenue Authority [for the local area] in which the probate or letters has or have been granted,

and delivers to such Authority a particular inventory and valuation of the property of the deceased verified by affidavit or affirmation,

and if such Authority is satisfied that a greater fee was paid on the probate or letters than the law required, the said Authority may—

- (a) cancel the stamp on the probate or letters if such stamp has not been already cancelled;
- (b) substitute another stamp for denoting the court-fee which should have been paid thereon; and
- (c) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion.

#### COMMENTARY.

**Synopsis of the chapter.**—This chapter consists of 11 sections dealing with the court-fee payable in respect of probates and letters of administration. They could be classified as follows, Sections 19-A and 19-B deal with cases where a higher fee than what is properly payable has been paid.

**Section 19-A** provides that where a higher fee has been paid on account of over valuation of the estate, and an application is made within 6 months for refund of excess court-fee paid, it could be so refunded.

**Section 18-B** provides that where debts have been paid out of the estate thereby reducing its value, and if a higher fee had been already paid, the difference could be got back, if an application is made within 3 years.

**Section 19-C** provides against duplicate payments of fees, in the case of several grants.

**Section 19-D** validates probates as regards trust properties though not included in the application for probate.

**Sections 19-E, F, G, H, & J.** deal with the converse of sections 19-A and 19-B and relate to cases of under-valuation of the estate, the consequent payment of a too low court-fee, the penalties and forfeiture payable for same, and the mode of collecting same. Of the sections,



Ss. 19-E and G may be dealt with together. The former section deals with a case where a person to whom a probate or letters of administration has been granted himself applies to have the probate or letters properly stamped in cases where on account of undervaluation of the estate the proper fee was not paid in the first instance. The section provides that in case such an application is made the Chief Controlling Revenue Authority may cause the probate or letters of administration to be stamped if

- (1) the full court-fee which ought to have been originally paid is paid,
- (2) without getting credit for the court-fee originally paid, and
- (3) a penalty is paid which if
  - (a) the application is made within one year of the grant is five times the proper court-fee, and
  - (b) the application is made after one year of the grant is twenty times the proper court-fee,

With a proviso that in case

- (1) the application is made within 6 months after the ascertainment of the true value of the estate and the discovery that too low a court-fee has been paid, and
- (2) such fee was paid in consequence of
  - (a) a mistake or
  - (b) its not being known at the time that some particular part of the estate belonged to the deceased, and if
- (3) the revenue authority is satisfied that it is so,
  - (a) the penalty may be remitted; and
  - (b) the probate or letters may be duly stamped on payment of the deficit court-fee alone.

**Section 19-G** though also dealing with a case of payment of a too "low court-fee \* \* " paid on every probate or letters of administration due on account of

- (1) any mistake or
- (2) ignorance at the time that some particular part of the estate belonged to the deceased, applies to cases where there has been no application forthcoming from the holder of the probate or letters of administration. This section has to be read with S. 19-E Proviso. The Proviso contemplates an application by the holder of the probate or letters within 6 months. Section 19-G provides that in case there is no such application from such a person he is to

- (1) forfeit a sum of Rs. 1,000 and
- (2) pay a further sum (penalty) at the rate of 10 per cent. on the amount of the sum wanting to make up the proper court-fee. It may be noticed that there is no provision for the payment of the deficit court-fee itself. It is well conceivable that the forfeiture of Rs. 1,000 may fall short of the actual deficit in the court-fees.

**Section 19-J** provides for the collection of the forfeiture and penalty. Para (1) of the section provides that "any penalty or forfeiture under S. 19-G may be recovered from the executor or administrator as if it were an arrear of land revenue by any collector in any part of British India." Regarding the penalty leviable under S. 19-E there is no such summary procedure laid down for obvious reasons. The revenue authority could refrain from stamping the probate or letters of administration, in case the fee and penalty are not paid. The Government can also file a suit for the recovery thereof.

**S. 19-J (2)** vests in the chief controlling revenue authority the power to remit

- (1) the whole or any part of the penalty or forfeiture levied under S. 19-G or
- (2) any part of the penalty under S. 19-E or
- (3) any court-fee under S. 19-E in excess of the full court-fee which ought to have been paid.

If **S. 19-J (2)** is read with the proviso to S. 19-E, it follows that if the person getting the probate or letters of administration, applies to have it stamped with the proper fee and makes such application within 6 months after the ascertainment of the true value by him, the *whole* penalty can be excused by the Revenue Authority. But if it be later than 6 months after such ascertainment by the applicant, and below one year after the grant, he has to pay a certain penalty, and foregoing the court-fee already by him pay the proper fee: and if his application is after one year after the grant, he has to pay a higher penalty and the payment as aforesaid. Of these penalties the Revenue Authority can remit only "any *part*" (S. 19-J (2)). What that part is, is entirely within the discretion of the Revenue Authority. But the applicant is bound to pay *some* penalty, in case he files the probate or letters for being properly stamped. On the other hand, where he does not make any such application, and a forfeiture and penalty are levied under S. 19-G the Chief Revenue Authority could waive the *whole* or part of same. S. 19-H provides for a case of enquiry into the valuation. The Collector may in cases where he thinks there has been an under-valuation direct the applicant to amend the valuation, and, if he fails to comply with the order, the court to hold an inquiry as to the true value of the

property, and give a finding thereon and that is final. But such an application by the collector must be made within 6 months from the date of the exhibition of the inventory by the petitioner. Any excess fee so found to be payable on inquiry held under S. 19 H (6) may be recovered from the executor or administrator as if it were an arrear of land revenue.

This chapter was inserted by the Probate and Administration Act, 1875, and based on the provisions contained in the English Statutes 48 Geo. III, Ch. 149, S. 35 and 55 Geo. III Chap. 184, Ss. 40 to 43 and 51.

### Section 19-A.

**Legislative Amendments.**—The words “of the province” were deleted and the words “of the local area” were inserted by Court-Fees Amendment Act X of 1901.

**Prior Law.**—Prior to the enactment of this section, the procedure followed was to refund the excess duty paid.

**Chief Controlling Revenue Authority.**—For the definition of the term see Section 2.

**“Of greater value”**—The value of the property to be assessed is to be determined as on the date of the application. Later changes of the value of property are not to be taken into account. In the estate of *A. C. Mac Millan*, 14 I. C. 80+; *In the Goods of R. N. Clark*, 14 Lah. 526.

**Grant of Probate**—There is no grant until the court-fee is paid and the grant issued to party. The *fiat* of the Judge upon the executors' petition can only be read as an order that Probate shall issue to the petitioner upon his complying with the statutory provisions and the rules of the court. *Alamelammal v. Surya Prakasa Mudaliar*, 38 M. 988.

**Nature of the fee.**—The sum charged upon a grant of Probate or of Letters of Administration is not a tax or duty levied on the property and is not charged thereon as an estate duty in England, but is merely a fee levied by the court for work done in issuing the probate etc. This is no less the case because the fee is levied on the value of the property. *In re the goods of George Thomas Williams*, 50 C. 597.

### Valuation of estate.

(a) *Uncertainty of recovering a debt* is no ground for reduction of court-fee. *In re the goods of Ram Chandra Ghose*, 24 C. 567. But see *In re Radhibai Rupji Sundarji*, 55 Bom. 844 cited under S. 19-I.

(b) *Property subject of litigation.* That fact does not preclude the assessment of the property, 24 M. 241; 23 C. 577. See also commentaries under S. 19-I, *infra*.

**Locality of assets and duty.**—Probate duty under 55 Geo. III, C. 184 is payable only on the deceased's assets which are within

the court's jurisdiction at the time of his death; it is not payable on the deceased's assets which at the time of his death were in a foreign country but have since his death come within the jurisdiction and been administered by his executor or administrator. And the reason of this rule was stated by Lord Lyndhurst in *Attorney General v. Diamond*, (1831) 1 C. & J. 356:—"The probate is granted in respect of the effects which are within the jurisdiction of the spiritual judge at the death of the testator. The jurisdiction is exercised in respect of these effects only. If the executor thinks fit he may remove the goods from one jurisdiction to another, he may shift them from jurisdiction to jurisdiction. But this does not affect the right of granting probate which is regulated by the local situation of the effects at the testator's death." See also *Attorney General v. Hope* (1834) 2 Cl. and Fin. 84; *Pearse v. Pearse* (1838) 9 Sim. 430. Where assets had been remitted by the testator from India to England, but before their arrival in England the testator had died in India, it was held that probate duty was payable on them. "Actually and *de facto* the bills in question were on the high seas," said Kelly, C. B. "Now I do not know whether the point has ever been determined, but I am clearly of opinion that where property belonging to a British subject is on the high seas and probate is taken out in this country, that property forms part of the estate and effects of the deceased subject to probate duty: otherwise the inconceivable result would follow, that if a person were to sail out in his yacht with valuable property on board and died on the high seas, duty would not be payable on the yacht and the valuable property on board, on the ground that it was not at the time of death within the jurisdiction of this Court though not within any other." *Attorney-General v. Pratt* (1874) L. R. 9 Exch. 140.

In *In re Abraham* (1896) 21 Bom. 139, differing from the ruling of Garth, C. J., in *In the goods of March* (1879) 4 Cal. 725, Strachey, J., held that the principle established by the English cases governed the payment of probate duty under the Court-Fees Act, and that assets of the deceased coming within the jurisdiction from abroad subsequent to the grant were not liable to probate duty.

The deceased's share in a partnership is assets in the place where the partnership business is carried on. So, where a partnership carried on business in India in the cultivation of estates and the sale of the produce by means of agents, but subject to the control of a committee of the partners all of whom save two resided in the United Kingdom, it was held that the business was an English business, and that the share of the deceased partner not being property situated within British India was not subject to probate duty in India. *In the goods of Sassoon*, (1897) 21 Bom. 673. See Probate Procedure in British India by the Hon. Mr. Justice Cornish.

In *In the goods of G. T. Williams* deceased, 50 Cal. 597, it has been held that the fee is payable on the scale in force in the Province

where the grant is made in respect of all properties covered by the probate whether situate in that Province or outside.

**Refund.**—Where the application is out of time, the Board of Revenue is not competent to sanction a refund *vide* Pro. of the Madras Board of Revenue No. 1359 R Mis. dated 23-10 1911 and No. 1089 R Misc. dated 28-8-1913.

**19-B.** Whenever it is proved to the satisfaction of such Authority that an executor or administrator has paid debts due from the deceased to such an amount as, being deducted out of the amount or value of the estate, reduces the same to a sum which, if it had been the whole gross amount or value of the estate, would have occasioned a less court-fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Act,

Relief where debts due from a deceased person have been paid out of his estate.

such Authority may return the difference, provided the same be claimed within three years after the date of such probate or letters.

But when, by reason of any legal proceeding, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the said Authority may allow such further time for making the claim as may appear to be reasonable under the circumstances.

#### COMMENTARY.

**Origin and Scope of the section.**—This section follows the provisions of 51 Geo. III, C. 184, section 38.

*Sch. I Art. 11* of the Act provides that the court-fee is to be collected at the specified percentage on "the amount or value." This has been construed to be the net and not the gross value of the estate. *In the goods of Harriet Kerr*, 21 I. C. 502 = 18 C. L. J. 208; *In the goods of Quiningborough*, 30 I. C. 958 (See commentaries under S. 19 Clause VIII and Sch. 1, Art. 11). Section 19 prescribes a minimum value of the estate, for which fee is leviable. This section therefore provides for the refund of any fee that may have been paid on amounts for which the same is not leviable. See *In the goods of Ram Chandra Ghose*, 24 Cal. 567.

**Debts.**—Debts mean only the debts which the testator was bound to pay and for which his estate can be proceeded against. They do not include legacies or trusts provided in the will. *Percival v. Reg.*, 33 L. J. Ex. 289; but it is otherwise where under a marriage settlement the testator was under an obligation to provide for his children and he has appointed his son as executor to make the necessary provision. *Lord Advocate v. Hagart*, 2 H. L. 417.

**Property subject to mortgage or annuity.**—The mortgage amount or the capitalised value of the annuity should be deducted. See Annexure B schedule III of the Act, and commentaries on S. 19-I. See also *In the goods of Peter Innes*, 8 B. L. R. 43; *In the goods of Ramachandra Lakshmanji*, 1 Bom. 118; *In the goods of Rushton*, 3 Cal. 736.

**Rent of house.**—Where letters of administration are granted, limited for the purpose of collecting rent of a house, the duty is to be assessed on the value of the house. *In the goods of Ramachandra Doss*, 18 W. R. 153.

**19-C.** Whenever a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

#### COMMENTARY.

**Legislative changes.**—The word “such” which occurred after the word “whenever” was repealed by the Repealing and Amending Act XIII of 1891.

**Scope and object of the section.**—In *Swarnamayee Debi v. Secretary of State for India*, 45 C. 625, their Lordships observe thus “What the Legislature appears to have intended is that where the full fee chargeable under the Court-Fees Act on a probate at the time it is granted has been paid, no further fee shall be chargeable when a second grant is made in respect of that property as comprised in that estate.”

If this interpretation were not accepted, the anomalous result would follow that S. 19-C would have no application where the scale of probate duty has been raised in the interval between the grant of the first and the second probates and consequently the entire probate duty on the enhanced scale would be payable without deduction of the duty previously paid. This could hardly have been the intention of the Legislature. The second para of S. 19-C would be of no avail, as it is restricted to grants in respect of property forming part of an estate." Their Lordships then proceed to explain the decision in 21 W. R. 246 (*In the goods of Chalmers*) and 3 C. 733 (*In the goods of Gaspar*). In the former case the first grant had been made and a fixed duty paid thereon under the Indian Succession Act, 1865, and while the second grant was made the Court-Fees Act, 1870 was meanwhile enacted.

The section provides for cases where a fresh grant of probate of a will or letters of administration of the estate of the same person becomes necessary and the fees have already been paid in respect of the whole or part of the property comprised in the estate of the deceased person. *Bhagwati Saran Singh v. Secretary of State*, 54 I. C. 703=5 Pat. L. J. 36. There is nothing in the wording of section 19-C to confine its application to the case of some executors coming in to take out after one of their members had already taken out probate. It will apply equally to a subsequent application for the administration of the whole estate and an application to administer that which has been unadministered so far. *In the matter of Maung Win Pan*, 3 Rang. 90.

**"Under this Act."**—These words make it clear that the "Relief" granted by this section applies only in cases where a fee has been paid under the Court-Fees Act. *In the goods of Gaspar*, 3 C. 733; *In re Murch*, 4 C. 725; *In the goods of Gladstone*, 1 Cal. 168. The court-fee is payable only once and when the full fee chargeable has been paid no further fee is payable when a second or subsidiary grant in respect of the same estate becomes necessary. "Full fee payable under this Act" means what is payable with reference to the point of time when the grant of probate is made. *Swarnamoyee Devi v. Secretary of State*, 45 C. 625.

**Application of section.**—The section applies to cases where a fresh grant becomes necessary as for instance where a probate is revoked, or a portion of an estate remains unadministered. See *Bhagwati Saran Singh v. Secretary of State*, 54 I. C. 703=5 P. L. J. 36. See also *In the goods of Lieut-Governor Peter Innes*, 16 W. R. 253; *In the goods of Bibee Ameerum*, 15 W. R. 496.

### Cases to which the section is held to apply.

(1) *Revocation of letters of administration.*—Where it is revoked, fee already paid is to be refunded. *In the goods of Peter Innes*, 16 W. R. 253.

(2) *Annulment of the grant.*—Where an application is made under section 24 Explanation 4 of the Act X of 1865 for annulment,

to enable a fresh grant being applied for, the latter is exempt under this section from the payment of court-fee. *In the will of Alfred Jones*, 1 S. L. R. 177.

(3) *Second executor taking out probate*.—Where in pursuance of leave reserved probate was taken out by second executor, a fresh fee is chargeable. *In the goods of Bibee Ameerun*, 15 W. R. 496.

(4) *Death of executor*.—Where an executor to whom probate has been granted dies leaving a part of the estate unadministered, and another person is appointed to complete the administration, no fresh fee is leviable, *Swarnamoyee v. Secretary of State*, 45 Cal. 625 = 30 I. C. 394; *In the goods of Samuel Balthazar*, 4 L. B. R. 255.

(5) *Grant de bonis non*.—Where the appointment is made *de bonis non*, there is no new succession, or devolution of the estate which would justify a finding that fresh court-fee must be paid. *In the matter of Maung Win Pan* deceased, 3 R. 90 = 1925 Rang. 217.

**Death of beneficiary and fresh devolution of estate.**—This section has no application when the beneficiary under a testator's will dies before the administration is complete and an administration of the deceased beneficiary's estate becomes necessary. *Bhagwati Saran Singh v. Secretary of State*, 54 I. C. 703 = 5 Pat. L. J. 36.

**Increase in the value of the property.**—No fresh court-fee is payable although the value of the property may have increased after the previous grant. *Swarnamoyce Devi v. Secretary of State for India*, 45 C. 625; *In the goods of Samuel Balthazar*, 4 L. B. R. 225.

**Power of appointment.**—See commentaries under section 19 I.

**Valuation.**—For decisions bearing on the question as to how the property should be valued, see commentaries under s. 19-I.

**Exemption.**—For exemption of estates of certain value, see section 19 (viii).

**Section applies only to properties situate in British India.**—See *In the goods of Sir Albert A. D. Sasoon*, 21 B. 673.

**Probate jurisdiction of the court**—The probate jurisdiction of the court is founded on the deceased testator or intestate having had a place of abode or having left property within the local limits of the court's jurisdiction. It follows that the court has no power and jurisdiction to grant probate or letters of administration if the deceased did not at the time of the death have a fixed place of abode or leave property within the presidency or province or within the district as the case may be. *In the goods of Rose Learmouth*, 21 M. 120; *Bhavre v. Lakshmi Bai*, 20 B. 607.

**Change of venue.**—The removal of the property of the deceased from the jurisdiction of one court to that of another court does not affect the power of the court in whose jurisdiction the property was at the date of the testator's death to grant probate.



*Attorney-General v. Diamond* (1831) 1 C. & J. 356. Property which was on High seas on the date of the testator's death, but has since been brought to England, was held sufficient to give the court jurisdiction to grant probate of the will, in spite of the fact that the will purported to dispose of only the property of the deceased situate abroad. *Stebbing v. Clunies Rose*, (1911) 27 T. L. R. 361; *Attorney General v. Pratt*, (1874) L. R. 9 Ex. 140.

**Properties in different Provinces.**—The several local legislatures have fixed different scales of fees in respect of probates, etc. The fee to be fixed must be calculated according to the rate fixed for the Province in which the application is made. *In the goods of George Thomas Williams*, 50 Cal. 597 = 27 C. W. N. 812.

**Extent of the grant.**—A grant may be to take effect over the property of the deceased within the Province in which the court is situate or throughout British India. See section 273 of the Indian Succession Act.

**Determination of assets.**—Probate duty is payable only on assets which are within the jurisdiction of the court at the time of the application of the probate. *In the goods of Major-General Millet*, 51 P. R. 1902; In *In re Ezakiel Joshua Abraham*, 21 B. 139, it was held that the probate duty was payable only on assets which was at the date of testator's death within British India. See also Madras Board's Proceedings No. 1236 R. Mis, dated the 5th June 1903.

**19-D.** The probate of the will or the letters of administration of the effects of any person deceased heretofore or hereafter granted shall be deemed valid and available by his executors or administrators for recovering, transferring or assigning any moveable or immoveable property whereof or whereto the deceased was possessed or entitled, either wholly or partially as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a court-fee was paid on such probate or letters of administration.

Probate declared  
valid as to trust-pro-  
perty though not  
covered by court-fee.

#### COMMENTARY.

**Trust properties.**—They are exempted from the payment of the *ad valorem* fee prescribed by Schedule I Article 11 of the Act. In *re Dasu Manavala Chetty*, 33 M. 93 = 4 I. C. 1064 (F. B.)

**Scope of the section.**—This section exempts property “whereof or whereto, the deceased was possessed or entitled, either wholly or partially as a trustee.” Annexure B to the Act (Sch. III)

sets out as an item of deduction "property held in trust not beneficially or with general power to confer a beneficial interest."

**"Property held in trust not beneficially"** is property in which the deceased had simply the legal title of a trustee and no beneficial interest.

**English law.**—Property which the deceased shall have been possessed of or entitled to as trustee for any other person or persons and not beneficially was exempted from probate duty by the Stamp Act 1815, 55 Geo. III, C. 184. Sch. Pt. III; see also *Carr v. Roberts*, (1831) 2 B. and Ad. 905. The present section follows the provisions of 48 Geo. III, C. 147 section 35, and provides that the probate or letters of administration is valid notwithstanding such "trust property" was not included in the amount or value of the estate of the deceased and no court-fee paid thereon.

**Trust Property.**—The exemption relates only to property of which the testator was trustee and not property over which he has created a trust. *Deputy Commissioner of Singbhum v. Jagadish De*, 62 I. C. 513=1921 Pat. 206.

**Survivorship and the Code Neapolitan.**—Where under the Code Neapolitan which governed an ante nuptial contract, upon the death of either of the contracting parties, the property was divisible into two parts of which one part would go to the survivor and the other part to the heirs or devisees of the deceased, it was held that the deceased held half the property as trustee not beneficially, and that probate duty should be charged only on the half which represented his share in the estate. *In the goods of Froeschman*, 20 C. 75.

**The court has no powers to go behind the will of the testator.**—Where a testator bequeathed the whole joint family property inclusive of that of the son, purporting that the whole property is his, the court could not go behind the will and the averments therein, and no exemption inconsistent with the provisions of the will can be granted. *Kashinath v. Gourabai*, 39 B. 245=28 I. C. 473. But see *Keshavlal v. Collector of Ahmedabad*, 48 B. 75=77 I. C. 749=1924 Bom. 228.

**Hindu Joint Family Property.**—On the question whether the undivided share of a deceased co-parcener in the property of a Hindu joint family governed by the Mitakshara law, is to be regarded as "property held in trust not beneficially," there is a conflict of opinion between the High Courts. Such a question arose where joint family funds have been invested, in the name of one of the co-parceners, in shares in a Bank and on the death of that co-parcener the Bank required the production of probate or letters of administration as evidence of title to the shares or the moneys of the deceased. The CALCUTTA High Court in *In the goods of Pokurmul Augurwallah*, 23 C. 980; and the BOMBAY High Court in *Keshavlal Punjalal v. Collector of Ahmedabad*, 48 B. 75, have ruled that the deceased

co-parcener must be deemed to hold the property in trust not beneficially. In the latter case, Shah, C. J., observed as follows :—" On the father's death, what is called his estate is no estate of his : and the legal title which still continues in the dead man is really the title of a man whose beneficiary interest in the property on his death is nothing. As regards property of this character it could not properly be said that the deceased died possessed of it or was entitled to it as a trustee within the meaning of Section 19-D of the Court-Fees Act." It was accordingly ruled that no probate duty was payable in respect of the value of the shares held by the father in a company. For the earlier decisions of the Bombay High Court on the question, see 29 B. 161 and 39 B. 245. See also *In re Bhubaneswar Trigunait*, 52 Cal. 871 = 1925 Cal. 120. = 29 C. W. N. 879 (reversing the decision in 29 C. W. N. 372) holding that where a Hindu father died intestate leaving certain money in a Bank, the letters of administration granted to his undivided sons were exempt from duty. It was observed that "there has been and there is likely to be a continuous increase in the number of cases in which shares, Government securities and Bank accounts belonging to Mitakshara joint families stand in the name of one member and it is plain that further provision by the legislature is imperatively required to solve the difficulties which arise in making title to such property upon the death of the holder."

On the other hand a Full Bench of the MADRAS High Court has held in *In the matter of Desu Manavala Chetty*, 33 M. 93, that though the deceased father might be said to have held his son's share in the joint family property in trust, it was impossible to hold, so far at least as the father's own share was concerned that he held it in trust not beneficially having regard to the right of a co-parcener in the Madras Presidency to alienate his undivided interest or to enforce a partition of it at any time. One principal reason for the exemption from duty, of property vested in the deceased as a trustee, is that the beneficiary out of whose pocket the payment would come, acquires nothing by the trustee's death. That consideration certainly does not apply in the present case. It was held that the son could obtain a grant of letters of administration on paying the probate-duty on the value of his father's half-share in the property. See also *Muluketta Annapurnamma v. Atchutharamayya*, 1927 Mad. 1101; *Deputy Commissioner of Singbhum v. Jagadish Chandra*, 62 I. C. 513 = 1921 Pat. 206 and Probate Procedure in British India by the Hon. Mr. Justice Cornish p. 221. For a fuller treatment of this subject see commentaries under Sch. I, Article 11.

**Trust created by policy.**—In case of trust created by insurance policy in favour of wife and children the executor or administrator of the insured has no right to receive the moneys payable under the policy.

**Power of appointment.**—A power of appointment, unless and until it is validly exercised is not property. *In re Barnett*, (1908) Ch.

402. A 'power' is an individual personal capacity of the donee of the power to do some thing. *Ex parte Gilchrist*, (1886) 17 Q.B.D. 521

But where a testator bequeathed his property to his wife and nephew's sons jointly and provided that the wife should manage it and after her death, his nephews should get it, and the nephew applied for limited letters of administration and claimed exemption of court-fee under s. 19-D of the Act read with Sch. III, Annexure B, it was held that the widow was an executor with life interest in the property and was a co-tenant with the claimants and was not a trustee in respect of their share and therefore the appellants were not entitled to exemption. *Mangaldas v. Secretary of State*, 52 B. 188 = 30 Bom. L. R. 54 = 1928 Bom. 55.

**Provident Fund.**—Though a private company which has created the Fund is in a fiduciary relationship with the depositor, still such a company cannot be deemed to be a trustee for the defendant or nominee of the depositor. The latter is not exempt from paying duty in taking out Letters of Administration to the estate of the deceased depositor. *In the matter of H. Hamilton King deceased* 6 Rang. 558 = 1928 Rang. 312.

Provident Fund money does not form an asset of the estate of the deceased and passes to the nominee direct. Hence it is exempt from probate or administration duty. *Angus Mary v. James William* 1925 Nag. 108.

**Property appointed by will** under a general power of appointment becomes assets of the appointer for the payment of his debts. *Beyfus v. Lawley*, (1903) A. C. 411. But property appointed by will under limited power of appointment is not regarded as the property of the appointer. *Commissioner of Stamp Duties v. Stephen*, (1905) A. C. 137.

**Property held with general power to confer a beneficial interest.**—Such property should be shown in Annexure B to the Act for the purpose of exemption from probate duty. This provision was inserted as part of Schedule III by Act XI of 1889, amending the Court-Fees Act, VII of 1870, and its purpose was apparently to give effect to the ruling of Couch, C. J., *In the goods of George*, 1870 6 B. L. R. (Appx.) 138 and *In the goods of Oram*, (1874) 21 Suths. W. R. 245, that the property the subject of a general power of appointment was not the appointer's property so as to be liable to probate duty under the Court-Fees Act. Couch, C. J., based his decision on the ruling of the House of Lords in *Drake v. Attorney-General*, (1843) 10 Cl. and Fin. 257. In that case property was vested in trust for the use of a daughter for life with power to her to appoint the property by will but expressly excluding from the benefit of that appointment certain named persons. It was held that the property was subject to a general power of appointment and was not liable to probate duty under the Stamp Act of 1815 as property which the appointer died

"possessed of or entitled to" the principle being, as stated by Lord Cottenham that "the donee of a general power of appointment has no property in title or possession, but has power to do an act which will give title." In *In re Lakshminarayani Ammal*, 25 M. 515, the ruling of White, C. J., differed from the ruling of Couch, C. J., in *In the goods of George*, on the ground that the House of Lord's decision in *Drake v. Attorney General*, proceeded on the construction of the particular language of the Stamp Act, 1815; and he held that property over which a testatrix had exercised a general power of appointment was liable to probate duty under the Court-Fees Act. It does not, however, appear from the judgment that the learned judge's attention was drawn to the exemption given in Annexure B, to "property held with general power to confer a beneficial interest." Probate Procedure in British India by the Hon. Mr. Justice Cornish at page 226. The Calcutta High Court has in a recent case discussed the question with reference to the language of Art. 11 of Sch. II, the valuation form and the Annexures A and B of Schedule III and to the previous case-law on the point, and held that such property is not liable to probate duty under the Act. *In the goods of Maurice Saheb Manasseb*, 60 Cal. 1016 = 1933 Cal. 924.

**19-E** Where any person on applying for probate or letters of administration has estimated the estate of the deceased to be of less value than the same has afterwards proved to be and has in consequence paid too low a court-fee

Provision for case where too low a court-fee has been paid on probates, etc.

thereon, the Chief Controlling Revenue-Authority [for the local area] in which the probate or letters has or have been granted may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full court-fee which ought to have been originally paid thereon in respect of such value and of the further penalty, if the probate or letters is or are produced within one year from the date of the grant, of five times, or, if it or they is or are produced after one year from such date, of twenty times, such proper court-fee, without any deduction of the court-fee originally paid on such probate or letters :

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a court-fee was at first paid on the probate or letters and if the said Authority

is satisfied that such fee was paid in consequence of a mistake or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper court-fee, the said Authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon.

#### COMMENTARY.

**Amendment.**—The words “for the local area” were substituted for the words “of the province” by the Repealing and Amending Act (Act X of 1901), s. 3 (1).

**Scope and application of the section.**—The section contemplates an application on the part of the person who had taken out probate and produces the same to be duly stamped. *Maneckji v. Secretary of State*, (1896) Bom. P. J. 751; *Nikunja Rani v. Secretary of State*, 20 C. W. N. 504=43 C. 230. The section further contemplates that the estimated value of the estate is less than what the value has afterwards proved to be. In the above cited decision of 20 C. W. N. 504, their Lordships observe thus: “In the present case there was no determination of the valuation by the probate court; there was on the one hand an estimate by the petitioner, there was on the other hand an assessment by the Collector which was not accepted as correct by the applicant; indeed she disputed the correctness of the grounds for the higher assessment. There was consequently no room for the application of section 19-E. If it was intended to take proceedings under section 19-E, as the petitioner disputed the correctness of the assessment by the Collector, the court should have been moved for an enquiry into the true value of the assets under section 19-H; and if the Collector had adopted such a course, it would have been incumbent upon him as explained in the case of *In the goods of Stevenson*, 6 C. W. N. 898 (1902) to make out a case for enquiry upon definite facts. No such step was however taken and it is plain that there was no compliance with the statutory requirements and that the contingency contemplated in section 19-E had not arisen”. See also 24 Mad. 241 as to the application of the section.

**Under-statement of value.**—The authority dealing with a question of under-statement of value, whether by fraud, negligence or mistake, should have regard only to the value of the estate at the time of the application for probate, and the fact of an estate being subsequently found to possess a higher value than that declared is not material except in so far as proof of higher value at a later date may be evidence of under-statement of the value, on the earlier date. *R. P. 263/1714 R., Mis., 18th November 1908.*

If an executor does not accept the Collector's valuation of the property of a deceased, section 19-E has no application to the case, as it does not authorise the Revenue authorities to recover the excess fee from such a party. Though the High Court has no power to cause the grant to be properly stamped after it has been issued, the Collector may, even after the issue of the grant, move the High Court under section 19-H (4) to hold an inquiry into the true value of the property and to record a finding under section 19-H (6) to enable the Chief Controlling Revenue-authority to issue a Certificate under section 19-J (1) authorising the recovery of the deficient stamp duty. Such a motion may be made within six months from the date of the exhibition of the inventory—*Vide* proviso to section 19 H (4). B. Ps. 379-R., Mis., 22nd March 1910 and 568 R., Mis., 2nd May 1911 cited in Madras Stamp Manual, 4th edition, p. 203.

**Imposition of penalty under the section.**—"The decision in *Maneckji v. Secretary of State for India*, (1896) Bom. P. J. 751, shows that a civil court has no jurisdiction to review the decision of a Revenue Authority on the ground that the valuation had been incorrectly made or that the discretion in the imposition of the penalty had been erroneously exercised. But the position is different when the order for imposition of penalty is assailed on the ground that it has not been made in accordance with the statute. If the action of the Revenue Authority is *ultra vires*, if he has not followed the procedure prescribed by the statute which is the source of his authority, there is no enforceable claim which a civil court is bound to recognise." *Nikunja Rani v. Secretary of State for India in Council*, 43 C. 230 = 20 C. W. N. 504. See also *Feroze A. Cooper v. Secretary of State*, 111 I. C. 672 = 1928 Lah. 147.

**19-F.** In case of letters of administration on which too low a court-fee has been paid at first, the said Authority shall not cause the same to be duly stamped in manner aforesaid until the administrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof in case the full value of the estate of the deceased had been then ascertained.

Administrator to  
give proper security  
before letters stamped  
under Section 19-E.

#### COMMENTARY.

The section is based on 55 Geo. III, Chap. 184 section 42. This applies to a case where too low a court-fee has been paid by the petitioner in the first instance. Section 291 of the Indian Succession Act provides "that every person to whom any grant or letters of administration is committed, shall give a bond to the District Judge with one

or more surety or sureties, engaging for the due collection, getting in, and administering of the estate of the deceased."

**19-G.** Where too low a court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such probate or letters does not within six months \* \* \* \* after the discovery of the mistake or of any effects not known at the time to have belonged to the deceased, apply to the said Authority and pay what is wanting to make up the court-fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees and also a further sum at the rate of ten rupees per cent. on the amount of the sum wanting to make up the proper court-fee.

Executors, etc., not paying full court-fee on probates, etc., within six months after discovery of underpayment,

#### COMMENTARY.

**Amendments.**—The words "after the first day of April 1875 or" were repealed by Act X of 1901.

**Decision about inadequacy of court-fee.**—The decision of the revenue authorities could not be questioned in a civil court, *Manekji v. Secretary of State for India*, (1896) Bom. P. J. 751. But see 43 C. 230 cited under s. 19-E.

The question whether a certain property is or is not a trust property comes under s. 19-I and an order in respect of that property by a Financial Commissioner under s. 19-G without proceeding under s. 19-H is *ultra vires*. *Feroz A. Cooper v. Secretary of State*, 1928 Lah. 947.

**Requirements of the section.**—The lower court-fee must have been paid owing to mistake or ignorance that some property belonged to the estate of the deceased, and no application must have been made by the petitioner within six months after the discovery of the mistake. Else it will come under section 19-E (2). The penalty levied by the section is a forfeiture of Rs. 1,000 and a penalty of ten per cent. on the amount of the deficit court-fee. There is nothing stated about the balance of the deficit.

**Remission.**—The Chief Revenue Authority may remit in whole or in part the forfeiture of penalty provided by this section. See sec-  
~~tion 19-J.~~



**Collection.**—The forfeiture and the penalty may on the certificate of the Chief Controlling Revenue Authority, be recovered from the executor or administrator as if it were an arrear of land revenue. See section 19-J (1).

This section is based on s. 43 of 55, Geo. III, C. 184 and s. 122 of 56 Geo III, C. 56.

Notice of applications for probate or letters of administration to be given to Revenue-Authorities, and procedure thereon.

**19-H** (1) Where an application for probate or letters of administration is made to any Court other than a High Court, the Court shall cause notice of the application to be given to the Collector.

(2) Where such an application as aforesaid is made to a High Court, the High Court shall cause notice of the application to be given to the Chief Controlling Revenue-Authority [for the local area in which the High Court is situated].

(3) The Collector within the local limits of whose revenue jurisdiction the property of the deceased or any part thereof is, may at any time inspect or cause to be inspected, and take or cause to be taken copies of the record of any case in which application for probate or letters of administration has been made, and if, on such inspection or otherwise, he is of opinion that the petitioner has under-estimated the value of the property of the deceased, the Collector may, if he thinks fit, require the attendance of the petitioner (either in person or by agent) and take evidence and inquire into the matter in such manner as he may think fit, and, if he is still of opinion that the value of the property has been under-estimated, may require the petitioner to amend the valuation.

(4) If the petitioner does not amend the valuation to the satisfaction of the Collector, the Collector may move the Court before which the application for probate or letters of administration was made, to hold an inquiry into the true value of the property :

Provided that no such motion shall be made after the expiration of six months from the date of the exhibi-

tion of the inventory required by section 277 of the Indian Succession Act, 1865, or, as the case may be, by section 98 of the Probate and Administration Act, 1881.

(5) The Court when so moved as aforesaid, shall hold, or cause to be held, an inquiry accordingly, and shall record a finding as to the true value, as near as may be, at which the property of the deceased should have been estimated. The Collector shall be deemed to be a party to the inquiry.

(6) For the purposes of any such inquiry, the Court or person authorized by the Court to hold the inquiry may examine the petitioner for probate or letters of administration on oath (whether in person or by commission) and may take such further evidence as may be produced to prove the true value of the property. The person authorized as aforesaid to hold the inquiry shall return to the Court the evidence taken by him and report the result of the inquiry, and such report and the evidence so taken shall be evidence in the proceeding, and the Court may record a finding in accordance with the report, unless it is satisfied that it is erroneous.

(7) The finding of the Court recorded under sub-section (5) shall be final, but shall not bar the entertainment and disposal by the Chief Controlling Revenue Authority of any application under section 19-E.

(8) The Local Government may make rules for the guidance of Collectors in the exercise of the powers conferred by sub-section (3).

#### COMMENTARY.

This and Sections 19-I, J, and K which follow were inserted by the Court-Fees Amendment Act, XI of 1899, Sec. 2.

**Amendments.**—The words “for the local area in which the High Court is situated” were substituted for the words “of the province” by Section 3 (2) of the Court-Fees Amendment Act X of 1901.

**Notice of application.**—Notice of every application for probate or letters of administration has to be given to the Revenue Authorities and the section provides the means whereby they may check valuation and recover the proper fees. *In the goods of Bhuhaneswar*  
[Amendment, 52 Cal. 871.]

**Requisites of a valid enquiry.**—(1) The application should be made by the Revenue Authority to the court within 6 months from the date of the exhibition of the inventory : See Proviso to clause 4 of the section. The period of 6 months prescribed in the proviso to sub-section (4) must be taken to run from the time of the presentation of the revised inventory. *Per Smith, J.*, in the order of Reference in *Deputy Commissioner, Lucknow v. Aikman*, 9 Luck. 370=148 I. C. 247=11 O. W. N. 78=1934 Oudh 72.

(2) But in a case where the applicant for the issue of Letters of Administration filed several lists and none of them complete and the collector failed to get or obtain a correct inventory of the assets, it was held that there was no inventory filed that satisfied the statutory requirements, and that the application of the collector under this section was not barred though filed beyond 6 months after the date of one of the inventories. *Rajkumari Bhubaneswari v. The Collector of Ganjam*, 41 C. 556=21 I. C. 915=26 M. L. J. 5 (P. C.)

(3) The Authority shall place sufficient materials before court to justify an enquiry being undertaken by the court. *In the goods of Stevenson*, 6 C. W. N. 898; See also *Nikunja Rani v. Secretary of State*, 43 C. 230=20 C. W. N. 504=31 I. C. 460.

**Sub-section 3.**—“ *Under-estimated* ”.—The value of an estate is under estimated if part of it is wrongly exempted on the ground that it is held in trust. The valuation is for the purposes of assessing the duty payable and such valuation is under-estimated if assets which should not have been excluded from that valuation, are excluded. *In the goods of Tarunkumar Ghosh*, 62 Cal. 114. See also *Feroz A. Cooper v. Secretary of State for India*, 1928 Lah. 947.

**Finality of finding as to the value.**—The finding of the civil court is final. See para. 7 of the section, *Chimatha Nath Pal v. Secretary of State*, 78 I. C. 901=1925 Cal. 357.

**Revision against the order of District Judge.**—A revision lies to the High Court where the applicant for probate alleges that certain trust properties have been erroneously included in the schedule and that they should be excluded from valuation. The failure of the District Judge to go into the matter is a refusal to exercise jurisdiction under s. 115 of the code. *Chinmatha Nath Pal v. Secretary of State*, 1925 Cal. 357.

**Review of finding as to value.**—The finding is open to review on grounds mentioned in O. 47, r. 1, C. P. C. *Bridubashini Roy Choudhury v. Secretary of State*, 51 Cal. 70.

**Costs of enquiry.**—The Court has no power to award costs in a proceeding under S. 19-H of the Court-Fees Act, for ascertaining the valuation of the properties in respect of which Letters of Administration have been granted. There is no provision in the section as to who is to bear the costs of enquiry nor any method prescribed for its realisation, *Hriday Mohini Das v. Secretary of State*, 50 Cal. 239=1923 Cal. 406=72 I. C. 472.

**The Indian Succession Act.**—Section 277 of the Indian Succession Act (X of 1859) and section 98 of the Probate and Administration Act (V of 1881) are now merged in section 317 of the Succession Act (XXXIX of 1925). It runs as follows:—"An executor or administrator shall within six months from the grant of Probate or Letters of Administration or within such other time as the court which granted the probate or letters may appoint, *exhibit in that court an inventory containing a full and true estimate of all the property in possession and all the credits and also all the debts owing by any person to which the Executor or Administrator is entitled in that character.*"

**Sections 19-E and 19-I.**—The finding of the Civil Court under this section does not bar the entertainment and disposal by the Chief Controlling Revenue Authority of any application under section 19 E; and section 19-I provides that the grant of probate or letters of administration shall not be delayed by reason of any motion made by the collector under section 19-H. This is intended to safeguard against the danger of delaying administration.

**Instructions on the working of Section 19-H. [Bombay and Calcutta].**—Board's Circular Order No. 3 of March 1902. In continuation of Circular Order No. 11 of September 1900, the following instructions on the working of section 19-H of the Act are issued by the Board for the guidance of Revenue officers:—

1. The object of section 19-H of the Court-Fees Amendment Act XI of 1899 is to provide an effective procedure for checking the valuation of property in respect of which application has been made to any court for probate or letters of administration, and for defeating by this means any attempt at evasion of stamp duty.

2. The Collector need not enquire into all the cases of which he receives notice from Court. Sub-section (3) gives him a discretion, which he should exercise properly. The stamp-revenue should be protected, but care should be taken to avoid undue harassment of the petitioners for probate or letters of administration.

3. The High Court have directed the District Judges to send to the Collector a copy of the valuation of the property of the deceased together with the notice, if the valuation is filed at the same time as the application, or as soon as it is received, if it is filed on a subsequent date. This will relieve the Collector in most cases of the necessity of sending a subordinate to the District Judge's Court to inspect or take a copy of the record of the case. If, on inspection of the valuation received from the District Judge, and after obtaining any further information which may appear necessary, there is reason to think that the value of the property has been underestimated, the Collector should make an enquiry.

Under sub-section (3), the Collector may require the attendance of the petitioner for probate or letters of administration if

such a course is found to be necessary in order to complete the enquiry. The obligation to attend would naturally follow from the competence of the Collector to issue the order requiring attendance; but there is no obligation to supply papers, etc. And disobedience to such a requisition is punishable under section 174 of the Indian Penal Code. The requisition should recite the section under which it issues, and the time and place at which the person is to attend. To enable prosecution under section 174 of the Indian Penal Code, precaution should be taken to ensure that the requisition is actually and personally received. In case of disobedience, the Collector can enforce his order by threat of prosecution under section 174. If he prosecutes, he should do so by complaint. The Collector cannot issue a warrant of arrest or proclaim, but he can prosecute under section 172 of the Indian Penal Code for absconding in order to avoid being served with the requisition, or, under section 173, for preventing the service.

4. The officers to be employed in holding enquiries should be carefully selected, and in important cases, the service of Gazetted Officers should be used.

5. Road cess returns and settlement and other Collectorate records will often provide valuable materials for testing the correctness of the valuation and the completeness of the list of property entered in it. The valuation should be based on the market-value of the property where it is ascertainable, as ordered in the Board's Circular Order No. 12 of June 1899.

6. If any estate includes properties situated in several districts, the Collector of the District to whom notice has been sent by the District Judge shall, if he decides on an enquiry, make reference, to the Collector within the limits of whose revenue-jurisdiction any part of the estate is located, to obtain a valuation of that part.

7. A deduction from the valuation should be made on account of annuities charged on the estate the capitalised value of the annuities being deducted. The tables given in Appendix IX of the Civil Service Regulations, which are used in the Accountant-General's Office for the calculation of the present values of monthly payments continuable for life, or a fixed number of years, will enable the Collector to ascertain the capitalised value of annuities. In accordance with the view of the Legal Remembrancer, however, only annuities, charged on the estate of a testator previous to his death as debts payable by him, should be deducted from the value of the estate. Annuities created by the very will of which probate is sought should not be deducted, as they are legacies, and not debts, and are not included in Annexure B to Schedule III, added to the Court-fees Act, 1870, by Act XI of 1899.

8. When the enquiry has been completed, and the Collector finds that the property has been under-valued he may require the petitioner for probate or letters of administration to amend the valua-

tion, and should at once intimate his action to the Judge, with the request that he may be informed whether the amendment is made or not. Should the amendment not be made, the Collector may move the Court to make an enquiry.

If the valuation is amended as required by the Collector under section 19-H (3), but the additional fee is not paid into Court, or tendered to the Collector, the Collector shall report the case to the Board through the Commissioner for an order under section 19-G.

When after the completion of an enquiry by the court, any additional fee found due, or when after the passing of an order under section 19-G, any penalty or forfeiture adjudged, is not paid, the Collector shall apply, through the Commissioner, for a certificate of the Board under section 19-J.

9. A register of these cases should be kept in the Collector's office in the prescribed form. \*

For similar instructions in other Provinces, see the Stamp Manuals of those Province.

**19-I.** (1) No order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the form set forth in the third schedule, and the Court is satisfied that the fee mentioned in No. 11 of the first schedule has been paid on such valuation.

(2) The grant of probate or letters of administration shall not be delayed by reason of any motion made by the Collector under section 19-H, sub-section (1).

#### COMMENTARY.

**Grant of Probate or Letters of Administration.**—The section contemplates the prepayment of duty before an order for grant of probate is made. *In the goods of Omeda Bibi*, 26 C. 407=3 C. W. N. 392; *Nikunja Rani v. Secretary of State for India*, 20 C. W. N. 504=43 C. 230; *Swarnamoyee v. Secretary of State for India*, 43 C. 625; *Maung Ye Gyan v. Ma Hue*, 1 L. B. R. 228. But an executor cannot be compelled to pay probate duty until the

\* *Note.*—The register is meant for such cases only as are received from the Civil Court. An enquiry in another District under paragraph 6 of the Circular Order (No. 3 of March 1902) is subsidiary to the original proceeding. It does not initiate another original case under the Court-Fees Act, VII of 1870, as amended by Act XI of 1899, in the District in which enquiry is made. In such cases, it is a interlocutory case only, and should find entry in Register 8.

collector has finished his work with regard to valuation of the property. *Monmohini Dassi v. Taramoni*, 1929 Cal. 733. In one case the Oudh Court has held that the section is no bar to the hearing of an application previous to the deposit of court-fees, if the counsel for the petitioner undertakes to pay such court fee as may be found due if his application is accepted. *Deputy Commissioner of Lucknow v. Taj Kihen*, 8 I. C. 695.

No grant of probate or letters of administration can be made until the prescribed form has been filed, and the appropriate duty paid. See High Court Testamentary Rules, Madras, Rule 4 (d); Bombay Rule 553; Calcutta Rule 4. With regard to the Calcutta Rule it was observed by Justice Sale in *In the goods of Omeda Bibi*, 26 C. 407, as follows:—"The fee is required to be prepaid to the satisfaction of the court. But the court is not required to satisfy itself that the valuation is correct, but only that the fee mentioned in Schedule I, Article 11 of the Court-Fees Act has been paid on such valuation." *In the goods of Bhuvaneshwar Trigmait*, 29 C. W. N. 879. The expression "valuation of the property" in s. 19-1 means valuation of the property of the deceased. If a husband enters any shares in the names of himself and his wife, then it is an advancement for the benefit of the wife, absolutely, if she survives her husband. On the wife's survival, such shares are not the property of her deceased husband and the wife is not liable to pay court-fees on the value of the shares. *Dputy Commissioner, Lucknow v. Aikman*, 9 Luck. 370 = 148 I. C. 247 = 11 O. W. N. 78 = 1934 Oudh 72.

**Administration Pendente Lite.**—The requirements of this section apply to a grant of administration *pendente lite*. *Maung Hini Gyaw v. Maung Po Seim Gyi*, 95 I. C. 541 = 1926 Rang. 89. "If an administrator *pendente lite* is appointed in any testamentary proceedings, the duty must be paid before the issue of such grant, and upon termination of such proceedings, the person in whose favour the full grant is ordered to issue is entitled to such grant free of payment." *Kinney's Estate Duty in India* cited in *ibid*.

It is condition of grant that the executor or administrator will duly exhibit an inventory and account. See Section 317 of the Indian Succession Act. Section 318 requires that when a grant has effect throughout British India, the amount or the value of assets in each Province shall be separately stated in the inventory. See Annexure A.

All the assets of the deceased which the petitioner has collected or which he is able and ought to collect as executor or administrator must be disclosed in the Annexure A of the valuation form. *Kup-pammal v. Ammani Ammal*, 22 M. 345.

**Limited Grant.**—If the grant is limited to certain property only of the testator, the court-fee is payable on the value of that property: *Gurbachan Kaur v. Satwant Kaur*, 90 I. C. 620 = 1925 Lah. 493.

**Property outside Province.**—Inasmuch as the sum charged upon a grant of Probate or Letters of Administration is not a tax or duty levied upon the property upon which such Probate or Letters of Administration operates, but is a fee for the work done by the court, the court has the right to levy court-fee at the rate obtaining in that Province even though part of the assets for which probate is granted lies outside the Province. *In re Williams* deceased, 50 C. 597 = 1924 Cal. 115. As different scales of court-fees prevail in different provinces, it is an unsatisfactory state of things that fees have to be calculated as indicated above. It is desirable to make the fee uniform in all Provinces.

### **Annexure A.**

#### **(1) *Provident Fund Money.***

Moneys nominated in favour of a person, who was not dependant under the rules of the fund are the assets of the deceased subscriber and vest as such in the Administrator-General who had obtained a grant of letters of administration with the nomination form annexed. See *In the goods of Molloy*, O. P. No. 110 of 1921, Madras High Court. See also *Angus De Santos v. James William De Santos*, 82 I. C. 121 = 1925 Nag. 108 cited *infra*. See also *Secretary of State v. Mary Murray*, 33 C. W. N. 1148 = 1930 Cal. 252 and other cases cited under Sch. I, Art. 11 *infra*.

#### **(2) *Chose in Action.***

A person has a right or claim before the action which is determined by the action to be a valid right or claim. *Attorney-General v. Lord Sudelay*, (1896) L. R. 1 Q. B. 354. A right of action of the deceased which is maintainable by his executor or administrator is an asset. As to valuation of such right see *In the goods of Abdul Aziz*, 23 Cal. 577. In *Saldanha v. The Secretary of State*, 24 M. 241, it was held that the mere fact that an item of property was the subject of litigation did not in itself prevent the value of the property from being assessed for the purposes of stamp duty on the application for probate. But as in that case there was no means of determining the value of the right which the deceased was seeking to enforce in the suit, the petitioner's valuation might be accepted and no stamp duty levied, the estimate of the value in the case not exceeding Rs. 1,000. The High Court at the same pointed out that in cases of this sort, the revenue is protected by section 19-E of the Court-Fees Act, and the petitioner would accordingly be ordered on the termination of the litigation to file in court a statement showing its result.

#### **(3) *Compensation for accident.***

The Workmen's Compensation Act VIII of 1923, section 8 provides that compensation payable in respect of a workman whose injury has resulted in death shall be deposited with the Commissioner and any sum so deposited shall be apportioned among the dependants



of the deceased workman. This compensation is not an asset of the deceased.

#### (4) *Bad debts.*

Outstandings whose recovery is hopeless by reason of being time-barred or which has been written off by the deceased as bad debts need not be included. But where a judgment debt due to the estate of the deceased is not wholly bad and can be recovered in part and hence is given as an asset of the estate of the deceased, the Bombay High Court has held that the executor applying for probate can put upon it what he considers its fair value, having regard to the chances of recovery and pay duty on such value only. *In re Radhibai Rupji Sunderji*, 55 B. 844 = 1931 Bom. 419. In this case the earlier ruling of the Calcutta High Court in *In re the goods of Ram Chandra Ghose*, 24 Cal. 567, has been dissented from. See also *Saldanha v. Secretary of State*, 24 Mad. 241, cited *supra*.

### **Annexure B.**

With regard to debts due by the deceased, his executor or administrator is not bound to plead the statute of limitation and may pay a claim. That of course should be included in Annexure B. Provident Fund money does not form an asset of the estate of the deceased and passes to the nominee direct. Hence it is exempt from probate or administration duty. *Angus Mary De Santos v. James William De Santos*, 82 I. C. 121 = 1925 Nag. 108.

The question whether a certain property is or is not a trust property and has been included in list B through mistake comes within this section and it is for the court to decide before granting the probate whether the property was or was not rightly included in Schedule B. An order in respect of that property by a commissioner under s. 19-G without proceeding under s. 19-H is *ultra vires*. *Feroze A. Cooper v. Secretary of State for India*, 1928 Lah. 947 = 111 I. C. 692.

**"Other property not liable to duty".**—The words "other property not liable to duty" refer to some exemption from liability enacted by the statute law, as, for example, under Section 19-C of the Court-Fees Act; or under an authority conferred by statute law as, for example, an exemption by Government under the authority conferred by Section 35 of the Court-Fees Act. *Per Benson, C. J., In the matter of Desumanavala Chettiar*, (1909) 33 M. 96. *Vide* Probate Procedure in British India by the Hon'ble Mr. Justice Cornish p. 223 *et seq.*

**Alteration in law as to the amount of fee payable.**—The payment of fee must be determined as per the law in force at the date of the grant. *Gangaram v. The Chief Controlling Revenue Authority*, 52 B. 61 = 106 I. C. 66 = 1927 Bom. 643. But it was held in *Thaddeus v. Secretary of State for India*, 81 I. C. 751 = 1924 Cal. 987, that where an application for probate was made while one scale

of fee was in force the same must be applied even though before proof of the will, the scale was altered by an Amending Act.

**Alteration of value subsequent to application.**—Probate duty is to be levied on the value of the estate as at the time of making the application for probate. Subsequent depreciation of stocks and shares or accrual of dividends should not be taken into account. *In the goods of R. N. Clark*, 14 Lah. 526=1933 Lah. 936; *Emperor v. Stadman*, 12 Lah. L. T. 37; *In the estate of A. C. Mac Millan*, 14 I. C. 804. The court-fee ought to be levied in the first instance on the valuation put forward by the applicant for probate but the duty chargeable may subsequently be raised as a result of a reference made by the Collector under s. 19 H. *In the goods of R. N. Clark*, 14 Cal. 526.

**Duty of the civil courts, in respect of valuation.**—When an application is made for the issue of Probate or Letters of Administration, the Revenue Authorities get notice under S. 19-H; and it is their duty to satisfy themselves in the interests of Government that there is no undervaluation of the estate; and the duty of the court is only to satisfy itself that the proper fee as per the applicant's value has been paid. *In re Bhubaneswari Trugunait*, 52 C. 871=95 I. C. 529=1925 Cal. 1021. *In the goods of Aratoon Stephen*, 32 C.W.N. 799. See also B. P. 65/369 R. Mis., 30th March 1913 cited in Madras Stamp Manual, 4th Ed., p. 206. The grant cannot be delayed because the Collector has not made a motion under s. 19-H. *In the matter of will of Kritanta Kumar Bose*, 40 I. C. 576; *In the goods of Oomda Bibee*, 26 Cal. 407.

**Civil and Military Station, Bangalore.**—The Madras High Court exercises no jurisdiction over the assets of a deceased person within the limits of Civil and Military Station, Bangalore. Madras Board's Proceedings No. 1100 R. Mis., dated 17th September 1914. The Civil and Military Station, Bangalore, is foreign territory and part of the State of Mysore. *In re Hayes*, (1888) 12 M. 49.

**Application for prosecuting probate proceedings in forma pauperis.**—As O. 33, C. P. Code permits leave being granted for institution of suits alone in *forma pauperis*, it is for consideration whether applications for the grant of probate, or letters of administration or for the issue of succession certificate can be prosecuted in *forma pauperis*. This question arose in Madras in Application No. 2925 of 1930 (Madras High Court, unreported). That was an application for leave to conduct proceedings for the issue of probate in *forma pauperis*. Venkatasubbarao, J., held that such a petition will lie in view of O. 8, r. 14 of the O. S. Rules which refers not only to suits but also to proceedings. Therefore in view of the specific provision in the O. S. Rules, such an application is competent.

Apart from that, the view taken by his Lordship is that even under the Code, applications to sue in *forma pauperis* lie in the case

not only of suits but also of proceedings. His Lordship observes as follows :—

“Section 6 of the Court-Fees Act says that no document chargeable with a Court-fee shall be received by any Court unless such fee has been paid. This provision does not stand in the way of a person being given leave to sue in *forma pauperis*. In fact, Section 6 of the Court-Fees Act is subject to, and controlled by, Order XXXIII of the first schedule, C. P. C. and section 141 C. P. C. Order XXXIII relates to suits by paupers and rule 3 exempts a plaint filed by a pauper, from payment of Court-fee. Under section 141, the procedure relating to suits by paupers, extends to proceedings also. In spite then, of section 6 of the Court-Fees Act, a Court can in the case of paupers, receive plaints bearing no stamps. I see no reason for holding that a different result follows from the wording of section 19-I. It cannot be said that it is more mandatory (if such an expression is permissible) than section 6. Section 19-I must be reasonably interpreted. What it enacts is, that the succession duty should be paid *before*, and not *after* the order granting probate. This section was inserted by Act XI of 1899 which amended the Court Fees Act. Duty was being collected, not on the applications for, but on the grants of probate or letters of administration; and in certain cases, it was found that persons were satisfied with merely obtaining an order on their petitions, without actually taking out probate or letters of administration. It was with a view to guard against this evasion, that section 19-I was inserted. The section thus prescribes as to *when* the court-fee is to be paid, and not *by whom*. \* \* I find that my view received support from I. L. R. 18 Bom. 237. The headnote in that case reads thus: ‘Where an executor is not in possession of the property of his testator and cannot get possession of it, and where he has not himself the means of paying the necessary fees, he may be allowed to petition for, and, if entitled thereto, to obtain probate in *forma pauperis*.’ The reasoning in that case is not impaired, as I have shown, by the subsequent amendment which inserts section 19-I in the Court-Fees Act.” On the question as to the safe-guarding of the interests of the Government, his Lordship observes: “On the analogy of Order XXXIII, rule 10 of the Code of Civil Procedure, I hold that it (the Government) has a first charge on the subject-matter of the petition, that is, the estate of the deceased.”

It therefore follows that whether in the City of Madras or in the mofussil, an application for leave to conduct such proceedings in *forma pauperis* is maintainable.

The above ruling is based on the view that “the Court-Fees Act makes no distinction between succession duty and other species of court-fee.” Still the matter does not appear to be quite clear. The essential characteristic of court-fee is that the utmost limit of time for its collection is the pendency of the suit or proceeding. Once the suit terminates any deficiency in the court-fees paid cannot be recovered.

In this respect, it is unlike stamp duty or any other kind of tax or revenue due to the Crown. But in Chapter III-A there is provision for the collection of any deficient fee or duty in probate matters after the termination of the proceedings. Again once the suit terminates the court has no powers to determine the valuation thereof. But there are powers vested in the Revenue Authorities for moving the court for a revision of the valuation in probate proceedings even after their termination. Further where there is any deficiency of court-fee there is provision only for the collection of the deficiency. The penal provisions found under the Stamp Act are inapplicable to court-fees. But such penal provisions are found in Chapter III-A of the Court-Fees Act. These indicate that the duty leviable in respect of probate matters does not partake of the nature of court-fee. However there are decisions which take the view that it is in the nature of court-fee. In *In re G. T. Williams*, 50 C. 597, it was held that the sum charged upon a grant of probate or letters of administration is not a tax or duty levied on the property upon which the Probate or Administration operates but is merely a fee levied by the Court issuing the Probate or Letters of Administration for the work done in this connection. At page 602 His Lordship Greaves, J., observes as follows: "Now it is quite true that duties which are collected by means of stamps are in a sense, stamp duties, for instances, in England, Estate Duty, Probate Duty and Succession Duty are stamp duties because they are so collected; but I feel very great doubt whether a court-fee becomes a stamp duty."

**Sub-s. (2)—Grant not to be delayed by Collector's motion under s. 19-H.**—The grant of probate cannot be delayed after payment of the requisite fee, by reason of any motion made by the Collector under s. 19-H. So also the grant cannot be delayed where the Collector has failed to make such motion. *In re Prasanna Moyee Basu*, 40 I. C. 576.

**19-J. (1)** Any excess fee found to be payable on an inquiry held under section 19-H, sub-section (6), and any penalty or forfeiture under section 19-G may on the certificate of the Chief Controlling Revenue-Authority, be recovered from the executor or administrator as if it were an arrear of land revenue by any Collector in any part of British India.

(2) The Chief Controlling Revenue-Authority may remit the whole or any part of any such penalty or forfeiture as aforesaid, or any part of any penalty under section 19-E or of any court-fee under section 19-E in excess of the full court-fee which ought to have been paid.

Recovery of penalties, etc.

## COMMENTARY.

**Scope of the section.**—The section is composed of two parts, one dealing with the mode of collection of the forfeiture or penalty under section 19-G or any excess fee payable on an enquiry under section 19-H: and the other portion dealing with the powers of the Revenue Authority to remit the penalty or forfeiture under section 19-G or any part of the penalty under section 19-E or any excess fee paid. As to the scope of this section and sections 19-E and 19-G, see Synopsis *supra* at the commencement of the chapter.

**Realisation of penalty levied under Section 19-E.**—This could not be realised by the summary remedy set out in para (1) of this section as section 19-E is not one of the sections referred to therein. Hence a suit lies for same. "If a penalty is rightly imposed under section 19-E, there must be some method for its recovery. A suit for its recovery is not barred, either explicitly or impliedly. There is no provision in the law for recovery of the penalty by summary process, as section 19-E is not mentioned in sub-section (1) of section 19-J. But even if a summary remedy had been provided, it would not follow that the Crown was not entitled to the ordinary remedy by a suit, which is open to all its subjects. In England where the Crown claims sums due to it by way of penalty or otherwise, the recovery may be had by information (*Attorney General v. Freer*, 11 Price 183, *Bradlaugh v. Clarke*, 8 App. Cas. 354; and *Gawthorne v. Campbell*, 1 Aust. 205 (214). We feel no doubt that unless there is a statutory bar, a suit is maintainable by the Secretary of State for India in Council for recovery of penalty lawfully imposed." *Nikunja Rani v. Secretary of State*, 20 C. W. N. 504 at p. 506.

**Section 19-E not referred to in the section.**—Regarding the question why the summary remedy provided in section 19-J is not made applicable to penalties imposed under section 19-E, their Lordships observe thus in the above noted decision in 20 C. W. N. 504 at p. 507:—"We may here point out the reason why section 19-J which prescribes the mode of recovery of penalties makes no mention of section 19-E. In a case where that section is properly applicable, the petitioner is entirely in the hands of the Chief Controlling Revenue Authority who is at liberty to refuse to stamp the probate till the penalty has been paid; no occasion can consequently arise for recovery by summary process or by suit of the penalty imposed under section 19-E."

Sections 6 and 28 not to apply to probates or letters of administration.

**19-K** Nothing in section 6 or section 28 shall apply to probates or letters of administration.

## COMMENTARY.

**Sections 6 & 28.**—This section was inserted by section 2 of Act XI of 1899. Section 6 provides that no document chargeable under

the first and second schedules to the Act shall be filed, exhibited, etc., in any court of Justice or received by any public officer unless the proper court-fee is paid: and section 23 lays down that in cases where such insufficiently stamped documents have been received inadvertently, they are not to have any validity till properly stamped and the court or office could levy the proper stamp.

**Object of the section.**—"The object of this section is to avoid objection on the admissibility of the probate or letters of administration on the ground of improper stamp. It would be exceedingly inconvenient to make them subject to such objection. If the probate is insufficiently stamped or any fee is due, the Act makes provision for the Revenue Authority to realise the same." *Proceedings of the Legislative Council, Gazette of India, 18th Mar. 1899.*

**Exemption from fee.**—See section 19, clause VIII.

## CHAPTER IV.

### PROCESS-FEES.

Rules as to costs of  
processes.

**20** The High Court shall, as soon as may be make rules as to the following matters :—

(i) the fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other Civil [and Revenue] Courts established within the local limits of such jurisdiction ;

(ii) the fees chargeable for serving and executing processes issued by the Criminal Courts established within such limits in the case of offences other than offences for which police-officers may arrest without a warrant ; and

(iii) the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

The High Court may from time to time alter and add to the rules so made.

All such rules, alterations and additions shall, after being confirmed by the Local Government \* \* \* be published in the Local official Gazette, and shall thereupon have the force of law.

Confirmation and  
publication of  
rules

Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied, and shall be deemed to be fees leviable under this Act.

#### COMMENTARY.

#### Rule making power.

As to the power to make rules and prescribe fees for processes in Lower Burma, *see* the Lower Burma Courts Act, 1900 (6 of 1900), s. 41. As to the power of the Judicial Commissioner to make rules and regulate the fees to be paid for civil processes in Upper Burma, *see* the Upper Burma Civil Courts Regulation 1896 (1 of 1896) s. 30 (1) (a), Burma Code. As to power of the Bombay High Court to prescribe fees for processes issued by Courts constituted under the Bombay Civil Courts Act, 1869 (14 of 1869), *see* s. 42 of that Act, Bom. Code, Vol. I. As to computation of certain fees on applications under s. 17 of the Agra Tenancy Act, 1901 (U. P. Act 2 of 1901), *see* U.P. Code, Vol. II.

As to power of Chief Commissioner of British Baluchistan to make rules and prescribe fees, *see* the British Baluchistan Criminal Justice Regulation 1896 (8 of 1896), s. 20 (1) (a), and the British Baluchistan Civil Justice Regulation, 1896 (9 of 1896), s. 92 (a), Bal. Code.

**Notifications issued under the section.**—For notifications issued under the powers conferred by this section in conjunction with s. 22.

Ajmer-Merwara . . . *see* Aj. R. and O., Vol. I.

Bombay . . . . . *see* Bom. R. and O., Vol. I.

Burma . . . . . *see* Burma Gazette, 1900 Pt. I, p. 325.

Madras . . . . . *see* Mad. R. and O., Vol. I.

United Provinces

of Agra and Oudh . . *see* United Provinces R. and O., Vol. I, and U.P. Gazette, 1904, Pt. I, p. 261.

For rules as to fees for serving and executing processes in the U. P., *see* U. P. of Agra and Oudh Gazette, 1903, Pt. I, p. 45.

Rules by Judicial Commissioner, Oudh, as to refund of process-fees by Revenue Courts, *see* U. P. Gazette, 1902, Pt. I, p. 708.

Revenue Courts in Oudh, *see* U. P. Gazette, 1903, Pt. I, p. 46, and *ibid.*, 1903, Pt. I, p. 261.

Central Provinces, *see* Cen. Pro. R. and O., and Central Provinces Gazette, 1902, Pt. II, p. 466, and *ibid.*, 1904, Pt. III, p. 373 (as to criminal processes).

**Object of the section.**—The section empowers the High Court to frame rules for the levy of fees for process in Civil, Criminal and Revenue cases. The procedure for the promulgation of such Rules is also detailed. For the Rules and schedule of Fees framed by the several High Courts, See Appendix.

**Amendment.**—The words “and sanctioned by the Governor-General of India in Council” in the penultimate paragraph of the section has been deleted. The rules do not therefore require the sanction of the Governor-General, see the Devolution Act XXXVIII of 1920.

In the Punjab, the word “and revenue” are repealed, see the Punjab Land Revenue Act, 1887 (17 of 1887), Punj. and N.W. Code.

**Local Investigation.**—A commission issued to an Ameen to make a local investigation is not a “process” within the meaning of the section. *Jagat Kishore v. Denonath*, 17 C. 281.

The Court-Fees Act distinctly contemplates that process peons are to be employed, not only for the service of summonses, notices and order, but also for the execution of other processes, such as warrants of arrest or of attachment, or of arrest and distress. The Nazir has authority to delegate the execution of a warrant to a peon. In this case the peon was assaulted and it was held that the accused was guilty of preventing the public servant in the discharge of his duties and the entrustment of the execution of the warrant was held proper. *Dharamchand v. Queen-Empress*, 22 C. 596.

In execution proceedings in a suit the Court deputed an Ameen to make local investigation and report about the mesne profits. He did. The decree-holder was asked to pay the process-fee and on his failure to do so the report of the ameen was not considered. “A commission is not a process within the meaning of S. 20 of Court Fees Act. ‘Process’ has a well-understood meaning within which a commission cannot be included.” A rule of the Calcutta High Court levying the process fee in such case was held *ultra vires*. *Jagat Kishore v. Denonath*, 17 C. 281.

### Process fees in consolidated appeals.

**Calcutta.**—Order 48 r. 1, C. P. C. gives power to the court to direct which party should pay the process fees and does not empower it to relax or reduce the fee payable. This was the view of the Calcutta High Court in *In the matter of application of Studd*, 26 C. 124. Their Lordships observed: “The court has no power to relax the process-fee rules in any way. Process-fees are levied under the Rules framed by the High Court in accordance with the provisions of S. 20 of the Court-Fees Act. These rules have the force of law and therefore must be followed, and though the High Court may from time to time alter and add to the rules it is necessary that these altered rules should before being put in force be confirmed by the Local



Government. O. 48 r. 1, C. P. C. relates to the payment of process-fees by the parties to a suit and gives the court acting judicially powers to make an order between party and party only as to who should pay the process-fees. It does not expressly give power to remit the fees, or what comes to the same thing, to order that the process should be served free, or in other words at the expense of Government, and in the present cases we cannot, I think make such an order under O. 48 r. 1, C. P. C. seeing that the government is no party to the suits." In this case 29 appeals were presented and an application was made for remission of process-fees and that only 5 sets of process-fees should be charged under the Rules of the Calcutta High Court on the ground that the appeals were analogous and on behalf of the same appellants and the court refused the application. This was followed in *Kuer Suardh v. Chuidam Singh*, 1927 Pat. 318. See also commentaries under S. 8 *supra* under heading "Consolidation of Land Acquisition Appeals."

It is only consequent on these decisions the process rules in Calcutta were amended by the addition of a proviso that "in analogous cases where the appellant is the same, and respondents are different but reside in the same or immediately adjacent villages the additional process fee may be such a sum,—not being the amount of fee prescribed—as the High Court may in the particular case determine."

**Madras**—In Madras it has been held by a Full Bench that the Court has no inherent jurisdiction to consolidate cases which have been disposed of by a single judgment of the lower court so as to enable the party to file one vakalat in the petitions and pay one process fee for the common respondents. *In re Vaithilinga*, 53 M. 262 = 58 M. L. J. 521 = 1930 Mad. 381 (F. B.)

But there appears to be no objection to issue a single consolidated process with the several causes entered in it, provided that the amount of process fees for the issue of process in each case is paid.

**Poundage in sales held by collector.**—Where a decree is sent to the Collector under S. 68 of the Civil Procedure Code, and the property of the judgment-debtor is sold in execution of the decree, the Revenue authorities have legal power to recover, as expenses of sale, under R. 9 of Sch. III C. P. C., fees on the scale which applies in the case of sales under the Land Revenue Code.

The court sending the decree to the Collector is not competent to direct him to refund the fees levied in accordance with the Government Resolution on the subject.

The levy of poundage in such cases by Civil Courts, under the High Court circular is legal, as there is no restriction that the sale must be held by the Civil Court which levies the charge and the authority given by S. 20 of the Court-Fees Act of 1870, covers the making of Rules charging fees for executing processes issued by Civil

Courts. *Narayan Kalu Chambhar v. Bayaj Appa Sanawane*, 28 Bom. L. R. 1191.

**Appeals before Special Judge.**—The scale of process fees in such appeals is that prescribed in rules framed under the section as the Court of a Special Judge is a civil court within the meaning of the section. R. 65 of the rules framed by the Government under s. 189 of the Bengal Tenancy Act is not applicable to such a case. *Charusila Dasi v. Government Pleader, Birbhum*, 58 C. 995 = 1931 Cal. 572.

**21.** A table in the English and Vernacular languages, showing the fees chargeable for such service and execution shall be exposed to view in a conspicuous part of each court.

Table of process fees.

Number of peons in District \* and subordinate courts.

**22.** Subject to rules to be made by the High Court and approved by the Local Government \* \* \* ,

every District Judge and every Magistrate of a District shall fix, and may from time to time, alter the number of peons necessary to be employed for the service and execution of processes issued out of his court and each of the courts subordinate thereto,

and for the purposes of this section, every court of Small Causes established under Act No. XI of 1865 (*to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature*) shall be deemed to be subordinate to the Court of the District Judge.

Number of peons in Mofussil Small Cause Courts.

#### COMMENTARY.

**Amendment.**—The sanction of the Governor-General in Council for the validity of the Rules is no longer necessary, the words "and the Governor General of India in Council" having been deleted by the Devolution Act XXXVIII of 1920.

#### Rules.

For rules made under the powers conferred by this section in—

*Ajmer-Merwara* . . . see Aj. R. and O., Vol. I.

Assam, by the High Court, Calcutta . . . *see* Assam Gazette, 1902, Pt. II-A, p. 824.

Bombay . . . *see* Bom. R. and O., Vol. I.

Madras . . . *see* Mad. R. and O., Vol. I, and Fort St. George Gazette, 1901, Pt. I, p. 104.

United Provinces of Agra and Oudh . . . *see* United Provinces R. and O., Vol. I.

Central Provinces. *see* Cen. Prov. R. and O.

As to Burma, *cf.* s. 41 of the Lower Burma Courts Act, 1900 (6 of 1900).

**The number of peons and the scale of their remuneration.**—The number of peons to be employed for this purpose is by this section fixed by the Dt. Judge and the remuneration is by s. 20 settled by the High Court.

**Duty of process peons.**—They are not only to serve but also to execute processes, *Dhram Chand v. Queen Empress*, 22 C. 596, *See also* the High Court circulars set out in the Civil Rules of Practice and Circular Orders Vol. II, of the High Court of Madras.

**Act XI of 1865.**—Now the Provincial Small Cause Courts Act IX of 1887.

<p>23. Subject to rules to be framed by the Chief Controlling Revenue-Authority and approved by the Local Government</p>	<p>Number of peons in Revenue Courts.</p>
<p>* * * *</p>	

every officer performing the functions of a Collector of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court or the Courts subordinate to him.

#### COMMENTARY.

**Amendment.**—In the Punjab, s. 23 is repealed—*see* the Punjab Land-revenue Act, 1887 (17 of 1887), Punjab and N. W. Code.

The words “and the Governor-General of India in Council” were deleted by the Devolution Act (Act XXXVIII of 1920).

#### Rules.

For rules framed under the powers conferred by this section in—  
Assam . . . *see* Assam R. and O.

Central Provinces. *see* Cen. Prov. Gazette, 1905, Pt. III, p. 570.

Madras . . . *see* Mad. R. and O. Vol. 1.

As to Burma *cf.* S. 41 of the Lower Burma Courts Act, 1900 (6 of 1900).

**24.** [*Process served under this chapter to be held to be process within meaning of Code of Civil Procedure.*] *Repealed by the Repealing and Amending Act, 1891 (XII of 1891).*

## CHAPTER V.

### OF THE MODE OF LEVYING FEES.

**25.** All fees referred to in section 3 or chargeable under this Act shall be collected by stamps.

Collection of fees by stamps.

### COMMENTARY.

**Court-Fee stamps.**—The Court-fee leviable should always be collected in court-fee stamps.

**Exemptions in Madras.**—For cases where payment may be made in cash to officer of court *see* Rule 170 (1) of the C. R. P. and C. O. of the Madras High Court, Vol. I.

**Denomination of stamps.**—When stamps of full value are available, parties should use as few a number of stamps as possible 16 W. R. 152; but there will be no illegality in making of the full duty by a number of stamps of smaller value 16 W. R. 153; 17 W. R. 220, 12 W. R. 449. For further rules on this point *see* Appendix. But it is a common knowledge that the rule is rarely strictly observed. The following decision of the High Court of Patna will come as a surprise to those who tacitly ignore the departmental instructions regarding the use of a single stamp or as few stamps as possible instead of a plurality of stamps of trifling value. In *Jange Pande v. Sundagar Singh*, 1931 Pat. 113 a plaint was presented in a Small Cause Court with two stamps one of Rs. 20 and the other of Rs. 10. The plaint was returned with a direction to file a fresh single court-fee stamp of Rs. 30 and it was accordingly done. The plaint was returned even though a certificate from one stamp vendor was filed that a single stamp for Rs. 30 was not available and it was held that the plaintiff should have tried other stamp vendors in the same locality and the court's action was justified as correct. Then when the plaintiff applied for refund of the value of the Rs. 20 and Rs. 10 stamps originally filed by him, it was held that the application should be to the Revenue authorities and that the court should ordinarily grant a certificate setting out the facts in the form issued in 40 C. 365.

**26.** The stamps used to denote any fees chargeable under this Act shall be impressed or adhesive or partly impressed and partly adhesive, as the *Local Government* may, by notification in the *local official Gazette* from time to time direct.

#### COMMENTARY.

**Amendment.**—By the Devolution Act XXXVIII of 1920, the words “Local Government” have been substituted for the words “Governor General of India in Council” and the words “Local Official Gazette” for “the Gazette of India.”

**Madras.**—For rules framed by the Government of Madras under this section and s. 35 of the Act, see Appendix.

**Government of India**—For rules as to the collection of court-fees by adhesive and impressed stamps, See Gazette of India, 1883, Part I, Page 189.

#### Certain administrative directions.

**Rule requiring that the stamps should bear the words “Court-Fees”**—The wording of s. 26 does not authorise any such direction being given. The direction should therefore be regarded only as a departmental order, the non-observance of which cannot invalidate the stamp. *Annapurna v. Lakshman*, 19 Bom 145.

**Stamps “for use in the High Court” only.**—Court-Fees stamps having the words “For use in the High Court only” impressed on the back, could not be rejected by the subordinate courts as the words have some significance for administrative purposes only and do not invalidate the stamps. *Naresh Chandra v. Charles Joseph*, 97 I. C. 822=1926 Pat. 408.

Rules for supply,  
number, renewal and  
keeping accounts of  
stamps.

**27.** The Local Government may, from time to time, make rules for regulating—

- (a) the supply of stamps to be used under this Act.
- (b) the number of stamps to be used for denoting any fee chargeable under this Act,
- (c) the renewal of damaged or spoiled stamps, and
- (d) the keeping accounts of all stamps used under this Act :

Provided that in the case of stamps used under section 3 in a High Court, such rules shall be made with the concurrence of the Chief Justice of such Court.

All such rules shall be published in the local official Gazette and shall thereupon have the force of law.

#### COMMENTARY.

**Use of stamps of small denomination.**—Making up the total court-fee payable by a number of stamps of small value, is not illegal. *Mirza Dawd v. Syed Nadir*, 16 W. R. 153.

Where the appellant being unable to procure one stamp filed his appeal with two labels with a certificate by the treasurer that single label was out of stock but the District Judge rejected the appeal, it was held the appeal should not have been dismissed. (1887) 7 All. W. N. 212. But see *Gangi Pande v. Saudagar Singh*, 1931 Pat. 113 set out at length under s. 25 *ante*. Where the fees were not denoted in the manner prescribed by the rules under this section, the document can be treated by the court as unstamped. *Tota Rajayya v. Margoni Rajmalaya*, 1931 Nag. 91.

**Rules.**—For rules framed under this section by the several Local Governments, see Appendix.

**Damaged and spoiled stamps.**—For recovery of the value of such stamps and the procedure to be followed see the Stamp Manual of each province.

**28** No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped.

Stamping documents inadvertently received.

But, if any such document is through mistake or inadvertence received, filed or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of a High Court, any Judge of such court, may, if he thinks fit, order that such document be stamped as he may direct; and, on such document being stamped accordingly the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

#### COMMENTARY.

**Sections 4 and 6.**—This section is to be read with sections 4 and 6 of the Act.

**"Document".**—It includes a memorandum of appeal. *Balkaran v. Govinda*, 12 All. 129.

**Para 1 of the section.**—It provides that unless the document is properly stamped, it has no validity. For an exception, see s. 19 (k) which states that this section does not apply to probates or letters of administration and also s. 33 regarding the admission in criminal case of documents for which proper fee has not been paid. "Head of the office" does not mean the head of establishment of a court of justice but of an office. *Balkaran v. Govinda*, 12 All. 129.

Once a document is admitted by the trial court it does not lie in the mouth of a party to say that the document should be struck off the record. It is for the Court to allow the party putting the document in, to rely on it, on payment of the proper fee. *Maneklal v. Chandulal*, 28 Bom. L. R. 525.

**Effect of the section.**—The effect is that if the necessary court-fees on a document are paid within the time allowed by the court, the document may be treated as valid from the date on which it was first filed. *U Shin v. Maung Tha Gywe*, 8 Rang. 538=1931 Rang. 38.

### Mistake.

1. *Party's mistake.*—Where the mistake is due to the party and not to the court or any of its officers the concession granted by this section does not apply. *Muhammad Ahmed v. Muhammad Surajudin*, 23 All. 423; *Ram Tahal v. Dubri Rai*, 28 All. 310.

2. *A mistake of law* is also a mistake contemplated by this section. *Valambal Ammal v. Vaithilinga Mudaliar*, 25 Mad. 380.

3. *Mistake bona fide or otherwise.*—When there is an absence of due care and caution the court would refuse to allow the appellant time to pay proper court-fee. *Fateh Singh v. Baburam*, 67 I. C. 130.

Where the mistake in court-fee was pointed out by court and still the party refused to rectify the mistake, he is not entitled to any indulgence and time would not be granted to him under s. 149, Civil Procedure Code. *Tikkanram v. Bosaram*, 67 I. C. 106.

**Deliberate payment of deficit court-fee.**—Where the omission to pay court-fee is intentional or due to the wanton negligence of the party or his pleader, he cannot get any relief under s. 5 of the Limitation Act, *Jodhan Prasad v. Nanku Prasad Singh*, 46 I. C. 509. See also *Brijbukhan v. Totaram*, 1929 All. 75, where it was held that the High Court has full power to refuse to accept a memorandum of appeal when the amount of court-fee paid is insufficient. Sulaiman, C. J., observes as follows:—"It seems to be the practice to file appeals with insufficient court-fee stamps knowing that they are insufficient with a view to save limitation. I think that such deliberate attempts to get round the provisions of the Court-Fees

Act should not be tolerated. If a litigant has not got sufficient money ready to pay the whole court-fees, the whole appeal ought to be filed when such court-fees have been made good accompanied with an application for extension of time. But the filing of an insufficiently stamped appeal knowing it to be defective should not be permitted. No doubt the Bombay High Court has held that an appellate court is bound to accept an insufficiently stamped memorandum of appeal and to grant time to make it good. *Achut Ramachandra Pai v. Nagappa*, 38 Bom. 41 = 21 I. C. 337. But this view has not been followed in Patna in *Ram Sahay v. Laksmi Narain*, 42 I.C. 675, nor by the Lahore High Court in *Lekhram v. Ramji Das*, 1 Lah. 234 = 57 I.C. 215. The Madras High Court has also dissented from the Bombay view. *Narayana Rao v. Seshamma*, 27 M. L. J. 677 = 26 I. C. 33. Section 149 Civil Procedure Code no doubt gives a court power to allow deficiency to be made good in its discretion. The concession cannot be claimed as of right." His Lordship then referred to the provisions of s. 4 of the Court-Fees Act and stated that a deliberately insufficiently stamped memorandum of appeal must not be filed. The Lahore High Court also has held that where the provision of law is quite clear and there is no *bona fide* mistake the Court may refuse to grant time to a party to pay the deficient court-fee on a memorandum of appeal. *Mahomed Suleman v. Ghumandi Lal*, 1931 Lah. 343. See also the commentaries under Ss. 4 and 6 on the point.

In *Mahadevi v. Ramakrishnan*, 7 All. 528, the judges of the Allahabad High Court differed as to whether the order calling for the deficit court-fee can be made after the final disposal of the case or appeal. Muhammad, J., held that it could not be done, while Oldfield, J., held contra. For a fuller discussion see commentary under s. 12 *supra*.

**Rejection of plaint or memorandum of appeal.**—The power of court is set out in O. XLI, r. 3, Civil Procedure Code and by s. 149 the court may in its discretion allow time to make up the deficiency of court-fees.

Section 28 of the Court-Fees Act is subject to the provisions of the Civil Procedure Code and it was held in 38 Bom. 41 already quoted that a court cannot reject a memorandum of appeal insufficiently stamped without giving the party an opportunity to make up the deficiency. The contrary view and the case law bearing on the subject has been fully set out in the extract from the judgment of Sulaiman, C. J., quoted above.

As to whether there is to be a rejection of the plaint under O. VII, r. 11, C.P.C. or dismissal of the suit, see discussion under the heading 'Rejection or Dismissal' under s. 12 *supra*.

If a plaint not properly stamped is presented to the court not having jurisdiction and is subsequently returned for presentation to the proper court, the latter court is not bound to treat the plaint as



properly stamped, merely because no objection was taken to it by the court to which it was first presented. *Lachmi Prasad v. Secretary of State for India*, 1931 Pat. 39.

**Payment of deficit court-fee after the expiry of the period of limitation.**—There was a conflict of opinion amongst the several High Courts as to whether an insufficiently stamped plaint or a memorandum of appeal could be retrospectively validated by the party being called upon to make good the deficit even though on the date of the latter payment the suit or appeal has become time-barred. Section 582 (a) of the Civil Procedure Code of 1882 round which the controversy raged has been replaced by s. 149 of the Code of 1908 which is quite general in its terms and gives complete discretion to the Court to grant time to a party to make up the deficiency in court-fee and when the same has been paid the document in respect of which such fee is payable shall have the same force and effect as if such fee had been paid in the first instance. Of course this discretion should not be indiscriminately exercised so as to extend the period fixed for actions by the Limitation Act. *Sambu v. Harihar*, 18 C.W.N. 1071. But once the lower court exercises its discretion the appellate court cannot go behind the decision. *Priyanath v. Miajan*, 24 C. L. J. 88 = 29 I. C. 571.

**Plaints not properly stamped.**—O. VII, r. 11, Civil Procedure Code read with s. 28 of the Court-Fees Act is construed as making it incumbent on the court to grant time to a party to make up the deficiency. There cannot be an implied extension by the mere acceptance of the deficit court-fee. *Bhudan Sha v. Sitanath*, 13 C. L. J. 78. See also *Rajah Paramanand v. Ananda Lal*, 34 Cal. 20. Section 148 of the Code is a general provision empowering courts to enlarge any period either fixed or granted by the court for the doing of any act prescribed or allowed by the Code. S. 149 relates to the power of court to grant time for the payment of deficit court-fee. O. VII r. 11 (c) is construed as engrafting an exception to the discretion granted by s. 149. Though the Code gives a wide power to courts to grant time to a party to make up any deficiency in court-fee, that obviously means that the discretion can equally well be exercised against a party. Then comes in O. VII, r. 11 (c) which lays down that the courts have *no* discretion but to grant time to a plaintiff when he files a plaint with inadequate court-fee. The question of his *bona fides* or otherwise is therefore ruled out as irrelevant. The result is that O. VII r. 11 C. P. C. is construed as taking away the discretion of courts in refusing to grant time in cases to which it applies, though the courts may come to the conclusion that no such concession is at all deserved in any of such cases. The reason for this safeguard is not quite apparent and it is not at all clear why the discretion granted by s. 149 should be whittled down in any degree whatsoever by Or. VII r. 11. Again there appears to be no justification for withholding this concession to memoranda of appeals. It is

for consideration whether O. VII r. 11 (c) may not well be repealed as its enactment is responsible for a good deal of conflict of decisions and has been generally abused by the parties.

As regards the original side of the High Court, O. 49, R. 3 (1) C. P. C. makes O. VII r. 11 (b) and (c) inapplicable to plaints presented to the High Court. The apparent reason is that *ad valorem* court-fee was not leviable in the original side for suits. Now at least in Madras the fees rules do levy *ad valorem* court-fee. Under these circumstances it is for the Rule committee to see to the amendment of O. 49 r. 3 (1) C. P. C. As it stands now, a plaint on the original side cannot be rejected for non-payment of deficit court-fee unless it be the court invokes its inherent powers. If it so invokes, then it can reject a plaint untrammelled by the implied condition precedent engrafted on s. 149 by O. VII r. 11 (c) namely the grant of time to make good the deficiency. It is submitted it is high time these anomalies are rectified and the procedure made uniform in all these cases.

**Insufficient court-fee and amendment of plaint.**—The plaintiff filed a suit on a promissory note on the last day of limitation. The plaint having been insufficiently stamped the court allowed the plaintiff 10 days to make up the deficiency and returned the plaint. Within that time the plaintiff reduced his claim and represented the plaint. It was held that where a plaint is returned the permission of the court to amend the plaint is unnecessary and that it was open to the plaintiff to relinquish any portion of the claim in order to bring it within a certain court-fee and as the plaintiff in the particular case represented the plaint as amended within the period allowed by the court, the suit could be maintained. *Per* Jackson, J., in C. R. P. 1825 of 1927, M. L. J. Notes of cases Vol. 61 July Pt. 4.

**Improper valuation of claim. Amendment ousting jurisdiction of court.**—Where a court finds that on a correct valuation the plaint is not cognizable by it, the proper thing to be done is to return the plaint so that it may be presented to the court having jurisdiction. It will be time enough for the court having jurisdiction to entertain the plaint to consider whether the proper court fee has been paid, and if not paid, to proceed in accordance with powers conferred upon it by law, for that purpose. Where the court finds it has no jurisdiction, it cannot ask the plaintiff to amend his valuation with a view to direct him to pay additional court-fee and then return the plaint. *Satti Ramanna v. Padula Amireddi*, 61 M. L. J. 43.

**Memorandum of appeal.**—Where in a pre-emption suit the defendants admitted the plaintiff's right to pre-emption but put a higher market-value than what the plaintiff alleged and the defendant's value was accepted by court and a decree was passed, the plaintiff appealed alleging that a smaller amount alone should have been allowed to the defendant as the proper market price and paid court-fee on that amount alone it was held that the court could not

dismiss the entire appeal, but should hear the same to the extent that court-fee has been paid. *Amir Shah v. Sayid Shah Mahomed*, 1931 Lah. 237; See also *Firm Nikal Chandel v. Sardari Mal*, 96 I. C. 135=1926 Lah. 558. In *Shahu v. Bakri*, 1921 Lah. 43, it was held that an insufficiently stamped memorandum of appeal is not valid; and in *Shahadat v. Hukam Singh*, 1924 Lah. 401, it was held that having regard to sections 4 and 2S of the Act, there is no legal appeal filed if the order appealed against is not properly stamped. See also the commentaries under Ss. 4 and 6.

**29.** Where any such document is amended in order merely to correct a mistake and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp.

Amended documents.

#### COMMENTARY.

A party filed a suit in a Revenue Court for the value of certain trees and their produce. As regards the former claim the plaintiff was referred to a Civil court. The plaintiff is not exempted by this section from paying the court-fee on his fresh plaint in the Civil court. *Ganda Ram v. Sain*, 132 P. R. 1892.

**30.** No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any court or office until the stamp has been cancelled.

Cancellation  
stamp

of

Such officer as the court or the head of office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figure-head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

#### COMMENTARY.

##### **Return of plaint for presentation to proper court.—**

A plaint was filed in a court which was ultimately found not to have jurisdiction in the matter and the plaint was returned to be presented to the proper court. Before the plaint was returned the Court-Fees Act was amended. It was held that when the plaint which has been returned is presented in a court of competent jurisdiction the suit must be taken to have been instituted on the date of such presenta-

tion and court-fee was payable under the amended Act. The plaintiff would be credited with the amount already paid and was to pay the balance. *Bimala Prasad v. Lalmoni Devi*, 30 C. W. N. 91. No institution court-fee need be paid when a suit which was instituted before a settlement officer under the provisions of Regulation III of 1872 was transferred to a civil court under s. 5 of the Regulation, *Bihari Gopal Kumari v. Mahomed Kadirudin*, 12 C. W. N. 917.

Where the court returns a plaint under O. VIII, r. 10, C. P. C., it is not acting under s. 30 of the Court Fees Act. The plaintiff is not liable to pay the stamp once more. A document does not cease any the less to be a properly stamped document by the cancellation of the stamp. It continues to be properly stamped. By cancellation the stamp cannot be used again, but when a document which is the plaint in one court is rightly presented in another court as a plaint in another court it is not being used again. The cancellation in such cases must be taken to have been set aside by reason of the subsequent order returning the plaint. *Visweswara v. T. M. Nair*, 35 M. 567 = 10 I. C. 201 = 21 M. L. J. 533 = 1917 Mad. 257; *Ganesh v. Tatyā Bhamappa*, 51 B. 236 at page 239; *Prabhakarbhā v. Vishwanambhas Pandit*, 8 B. 313 (F. B.).

**Rules.**—For detailed rules regarding the cancellation of Stamps, See Appendix.

## CHAPTER VI.

### MISCELLANEOUS.

#### 31 *Repealed.*

This section has been repealed by s. 163 of the Criminal Procedure Amendment Act 1923 (Act XVIII of 1923) and s. 546-A has been substituted for it in the Criminal Procedure Code. It runs as follows :—

“546-A (1). Whenever any complaint of a non-cognizable offence is made to a court, the court if it convicts the accused, may in addition to the penalty imposed upon him, order him to pay to the complainant—

Order of payment of certain fees paid by complainant in non-cognizable cases.

- (a) the fee (if any) paid on the petition of the complainant, or for the examination of the complainant, and
- (b) any fees paid by the complainant for serving processes on his witnesses or on the accused, and may further order that in default of payment, the accused shall suffer simple imprisonment for a period not exceeding thirty days.

(2) An order under this section may also be made by an appellate court, or by the High Court when exercising its powers of revision.

The repealed section ran as follows :—

31. (i) Whenever an application or petition containing a complaint or charge of an offence, other than an offence for which police officers may arrest without warrant, is presented to a criminal court, the court if it convicts the accused person, shall in addition to the penalty imposed upon him, order him to repay to the complainant the fee paid on such application or petition.
- Repayment of fees paid on applications to Criminal Courts.
- (ii) In the case mentioned in section 18, the court, if it convicts the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee, if any, paid by the latter for the examination.
- (iii) When the complainant has paid fees for serving processes in either of the cases mentioned in the first and second paragraphs of this section, the court, if it convicts the accused person, shall, in addition to the penalty imposed upon him, order him to repay such fees to the complainant.
- (iv) All fees ordered to be repaid under this section may be recovered as if they were fines imposed by the court.

#### COMMENTARY.

**Application of the section.**—The section provides for the payment of certain fees, such as stamp fee on complaint in non-cognizable offences, to be recovered from the convicted persons in addition to the penalty imposed upon him by the court. The offence must be a non-cognizable one. *Mingam v. Emperor*, 80 I. C. 56 and not a cognizable one. *Mang San Mijin v. King Emperor*, 80 I. C. 1871 = 1923 Rang. 545. See also *Ma Ma Giji*, 81 I. C. 985.

#### Nature of the order.

(1) The section merely provides for the refund of process fees, when paid, but does not authorise their payment. *Mg. San Nyein*, 93 I. C. 79.

(2) The order for payment must be in addition to the fine imposed and should not be directed to be paid out of the fine. *Crown v. Po Hlaw*, 1 L. B. R. 9.

(3) The order of payment of process fee etc. is an addition to the penalty imposed and does not form part of the sentence and could

not be added to the fine imposed to take it out of the operation of s. 413 Criminal Procedure Code which prohibits appeals in petty criminal cases. *Madam Mundal v. Haran Ghouse*, 20 C. 687; *Emperor v. Karuppan*, 20 M. 188; *In re Vemuri Seshamma*, 26 M. 421. Consequently an appellate court cannot set aside an order of the trial magistrate passed under the section. *Emperor v. Madhapatla Subbarayadu*, 31 M. 547.

**Section 545 of the Criminal Procedure Code.**—The provisions of s. 545 do not govern the provisions of s. 31 of the Court-fees Act (now s. 546-A, Cr. P. C.). *Queen-Empress v. Yamana Rao*, 24 M. 305.

**Complaint not required to be stamped.**—If a complaint has been unnecessarily stamped, such an illegal levy of court-fees cannot be directed to be refunded by the accused on conviction. *Empress v. Khajabhoj*, 16 M. 430.

**Cognizable case.**—In a cognizable case it is inequitable to order the accused to pay the costs of the complainant. *Maung San Mylin v. King Emperor*, 1923 Rang. 245. Payment can be ordered only when the offence is non-cognizable. *Mingam v. Emperor*, 1922 All. 86.

**Offence.**—Section 4 (c) of the Criminal Procedure Code defines an offence as follows: "Offence means any act or omission made punishable by any law for the time being in force; it also includes any act in respect of which a complaint may be made under s. 20 of the Cattle Trespass Act, 1871." See also the definition in s. 3 (37) of the General Clauses Act X of 1897, and s. 40 Indian Penal Code and s. 4 Indian Penal Code, Explanation which says that the word 'offence' includes every act committed outside British India which if committed in British India, would be punishable. Consequently all complaints of offences under special or local Acts if non-cognizable are liable to court-fee and come within the operation of s. 546-A, Criminal Procedure Code.

**Discretion of court.**—Under the repealed s. 31 the court was bound to order the refund of court-fee and now is given the discretion to order the payment or not.

**Mode of realization.**—It is provided in sub-clause (b) that the court may order that in default of payment the accused may be ordered to suffer simple imprisonment for a period not exceeding thirty days.

**"May be recovered as if they were fines."**—The making of an order under s. 31 does not ordinarily amount to an enhancement of sentence but may be made as an incidental order to bring the judgments into conformity with the law. The section does not make the fees ordered to be repaid part of the sentence. *Thimmiah v. Emperor*, 47 M. 914—1925 Mad. 136

**32.** [*Amendment of Act VIII of 1859 and Act IX of 1869.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

**33.** Whenever the filing or exhibition in a Criminal court of a document in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent a failure of justice, nothing contained in section 4 or section 6 shall be deemed to prohibit such filing or exhibition.

Admission in criminal cases of documents for which proper fee has not been paid.

#### COMMENTARY.

Sections 4 and 6 relate to the levy of fees in the High Court and in the mofussil courts and offices. By this section the imperative provisions of ss. 4 and 6 are relaxed in their application to criminal courts where such relaxation is necessary to prevent a failure of justice. For a similar exemption of stamp duty, see s. 35 (d) of the Indian Stamp Act (Act II of 1899.)

**34.** (1) The Local Government may from time to time make rules for regulating the sale of stamps to be used under this Act, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

Sale of stamps.

(2) All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

(3) Any person appointed to sell stamps who disobeys any rule made under this section and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

#### COMMENTARY.

**Amendment.**—This section was substituted for the original section by the Repealing and Amending Act (XII of 1891).

Where the adhesive stamp on a plaint bore a different name and different date, the punching official refused to, punch it, it was held

he was right. *George Gerson v. Radha Krishna* 6 Cal. W. N. 785. The practice amongst attorneys to accommodate each other in respect of unused stamps was deprecated.

"Sells or offers for sale."—A thief selling a stolen stamp could be prosecuted under this section, *Queen Empress v. Virasami*, 24 M. 319, although such person cannot give a legal title in regard to the stamp.

*Exchange of stamps.*—A pleader having an unused stamp giving it to another on the understanding that the latter is to deliver a similar stamp later on commits no offence under this section. *Keder Nath Saha v. Emperor*, 30 C. 921.

The case of a mukhtear who purchases a court-fee stamp for a client and transfers it to another client is not covered by this section. Where a pleader instead of obtaining refund on a stamp altered the name on the stamp and used it for another client, for the first time, it was held that no prosecution lies under s. 468, I. P. C. and this section, in the absence of proof that he acted dishonestly or fraudulently. *Emperor v. Abdul Hakim*, 1931 Lah. 337.

This section does not prohibit a pleader or banker purchasing stamps in bulk and affixing them to the documents as and when occasion arises. (C. P. circular dated 21-10-1895).

A person can make a gift of court-fee stamps to another. It is no offence. *Bibi Chandoo v. Jwala Pershad*, 11 I. C. 840.

Removing a new court-fee stamp from a document and substituting a used one with figures altered is an offence under s. 477-A of the Penal Code, *Emperor v. Bibidanandha Chakravarthi*, 47 Cal. 71.

There is no provision of law which prevents the use of a stamp by a person who has purchased it through another, though only the name of the latter has been entered on the stamp by the vendor. Madras Board's Proceedings No. 247, 1459 R. Mis. dated 22-10-1919.

Licensed vendors purchasing stamps from private persons are punishable for abetment of an offence under s. 69 of the Stamp Act. Madras Board's Pro. No. 2366 R. Mis. dated 14-10-1902.

**Bengal amendment.**—The following new section has been inserted, by Act VII of 1935, namely :—

**34-A.** *Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Act, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.*

*Enlargement of time.*



## COMMENTARY.

This section is a reproduction of s. 148, C. P. C. and its enactment in the Court-Fees Act in Bengal is intended to make the Act a self-sufficient enactment. As to applicability of the section, see the commentaries under s. 6 *supra*.

**35.** The Local Government may, from time to time by notification in the Local Official Gazette reduce or remit in the whole or in any part of the territories under its administration, all or any of the fees mentioned in the first and second schedules to this Act annexed,

Power to reduce or remit fees.

and may in like manner cancel or vary such order.

## COMMENTARY.

**Amendment.**—This section has been amended by the Devolution Act XXXVIII of 1920 ; The words ‘ Local Government ’ ‘ Local Official Gazette ’ and ‘ the territories under its administration ’ were substituted respectively for the words “ Governor General of India in Council,” “ Gazette of India ” and “ British India ”.

**Reductions and remissions.**—For rules framed by the Government under this section and s. 26, see Appendix.

**Bengal amendment.**—For section 35 the following section has been substituted, namely :—

**35.** (1) *The Local Government may, from time to time subject to such conditions or restrictions as it may think fit to impose, by notification in the Calcutta Gazette, suspend the payment of or reduce or remit, in the whole of Bengal or in any part thereof, all or any of the fees mentioned in the first and second schedules to this Act annexed and may in like manner cancel or vary such order.*

Power to suspend, reduce or remit fees.

(2) *The Local Government may, from time to time by rules, prescribe the manner in which any fee the payment of which is suspended under sub-section (1) may be realised and for this purpose direct that such fee may be recovered as a public demand.*

## COMMENTARY.

The power to suspend levy of court-fee is new. There is also provision for the collection of the court-fee, the levy of which is suspended. It is provided that it can be collected as a public demand. This is only an extension of the procedure followed in collecting the fee in cases where leave to sue *in forma pauperis* is granted, the difference being that remedy provided is more summary than in the case of pauper petitions, as in these cases, the court-fee can be recovered as a public demand and not only by taking out execution proceedings. The method of collection of court-fee as a public demand both in this section and in section 12 is an innovation and the acceptance of this principle may have far-reaching consequences.

36. Nothing in Chapters II and V of this Act applies to the commission payable to the Accountant-General of the High Court at Fort William, or to the fees which any officer of a High Court is allowed to receive in addition to a fixed salary.

Saving of fees to  
certain officers of High  
Courts.

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## SCHEDULE I.

## AD VALOREM FEES.

## Article 1.

Number.	Proper fee.
1. <b>Plaint</b> [written statement pleading a set-off or counter-claim] or memorandum of appeal (not otherwise provided for in this Act) [or of cross objection] presented to any Civil or Revenue court except those mentioned in section 3.	<p>Six annas.</p> <p>Six annas,</p> <p>Twelve annas,</p> <p>Five rupees.</p> <p>Ten rupees.</p> <p>Fifteen rupees.</p> <p>Twenty rupees,</p>
When the amount or value of the subject-matter in dispute does not exceed five rupees.	
When such amount or value exceeds five rupees, for every five rupees, or part thereof, in excess of five rupees, up to one hundred rupees.	
When such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees, up to one thousand rupees.	
When such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to five thousand rupees.	
When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees.	
When such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees.	
When such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees.	

Number.	Proper fee.
1. <i>Plaint, etc.—Contd.</i>	Twenty rupees.
When such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees.	
When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees.	Twenty-five rupees
Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be three thousand rupees.	

## COMMENTARY.

**Local amendments.**—This Article has been amended in Bengal by Act IV of 1922, in Behar and Orissa by Act I of 1922, in Bombay by Act II of 1932, in Central Provinces by Act XVI of 1935, in Madras by Act V of 1922, in Punjab by Act VII of 1922, and in the United Provinces by Act III of 1932. The amendments are all calculated to raise the scale of fees leviable under the Article. In Madras, the original scale is retained for suits of a small cause nature by the enactment of a separate Article, *viz.*, Art. 2 of Sch. I. In Central Provinces, the original scale is retained for suits between landlord and tenant for arrears of rent, the Article being amended to that end, while a separate Article, Art. I-A is enacted providing for a higher scale of fee for other suits. For the various amendments, and the Tables of rates of *ad valorem* fees for each province, see Appendix.

**Scope of the Schedules.**—Schedules I and II set out the fee payable in respect of particular suits or applications. Schedule I sets out the cases where *ad valorem* fee is levied, while Sch. II contains the cases where fixed fees are levied. Schedule I must be taken as supplementing provisions of s. 7 of the Act. In the words of Richards, C. J., in *In the goods of Mrs. Meik*, 40 A. 271 at p. 281 "We are bound to read the Schedules with the Act."

### Is Article 1 a substantive provision?

**The earlier view.**—The view was held that this Article was not a substantive provision but was only supplementary to s. 7. The idea was that it did not stand by itself but was a mere machinery provision for the application of s. 7 and other substantive provisions of the Act. The substantive provisions were thought to prescribe the processes by which the values of appeals as well as suits were

arrived at, while Art. I was considered as a provision simply to find out the amount of court fee payable on the valuation so arrived at. In other words the sections determined the value and Art. I determined the amount of fee payable on that value.

"Schedule I of the Act does not stand by itself. It is supplementary and not alternative to s. 7 and other sections of the Act. Section 7 states the various processes by which value in different suits are to be arrived at, and the Schedule then applies the proper court-fees to those values. The general purpose of s. 7 is to lay down a value that shall remain unchanged in all stages of a case. Once the value of a relief has been ascertained for the purposes of the plaint, the first Schedule forthwith rates the relief at the same value for the purposes of appeal. The value of the same relief remains unchanged all through the succeeding stages of the litigation. The same relief should have the same value whether the appeal is made against its grant or its refusal by the lower Court." *Dhiraj-singh v. Rajaram*, 8 I. C. 1125.

In (1880) 3 All. 108 (F. B.) *Raghobir Singh v. Dharam Kuar*, Oldfield, J., was of opinion that the wording of the Article meant "a provision fixing the amount of fees chargeable." In *Sangat Baksh Singh v. Ramat Dagideo Baksh*, 25 O. C. 30, it was held: "The provisions of s. 7 are applicable equally to appeals as to original suits and the word 'suit' is not there used in contradistinction to 'appeal', thereby indicating that the Article was not a substantive provision relating to appeals, to which s. 7 applied.

In *In the matter of F. W. Quarry*, (1890) 13 All. 94, where the decree-holder in a redemption suit appealed with regard to the amount he was ordered to pay, it was held that s. 7, cl. 9 applied to the case and not Sch. I, Art. I. In *Reference under the Court-fees Act* (1899) 23 Mad. 84, where the defendants against whom a decree in ejectment was passed appealed on the ground that compensation for improvements should be given to him, it was held that the appeal should be valued, as the suit was, under s. 7, cl. 5 and not under Art. I of Sch. I. Even where the only question raised is as to the value of improvements, the appellant should not be called upon to pay any fee other than that payable in a suit for possession of land." The idea underlying this decision also seems to be that s. 7 is the charging section with regard to appeals as well as suits and that Art. I is merely auxiliary to the section.

**The later view.**—This interpretation of s. 7 and Sch. I, Art. I, gradually underwent a change, it being thought that s. 7 applied to suits and that Art. I was a substantive provision applying to appeals and not merely fixing the amount of court fee payable on the value of suits and appeals arrived at by the processes of computation stated in s. 7. Even in the decision 3 All. 108 (F. B.) quoted above, Straight, J. seems to have thought that this Article was a substantive provision alongside of ss. 7 and 8. "Sections 7 and 8 specifically declare the rates at which relief by suit of a particular

class or character therein defined is to be calculated. The category of likely causes of action is as far as can be, exhausted, but in order to guard against the possibility of cases arising, for which no provision has been made, Sch. I, Art. 1 of the Act is so expressed as to include any plaint or memorandum of any kind or description other than that contemplated by ss. 7 and 8. The words "not otherwise provided for in this Act" relates back to those two sections." In (1905) 27 All. 447, *Nepal Rai v. Deb Prasad*, it was definitely laid down that s. 7 was confined to suits and that Art. 1 applied to suits and appeals not provided for in the section. The decision was followed in *Reference under the Court-Fees Act* (1905), 29 Mad. 367, where it was laid down that s. 7 applied only to suits and that in appeals court-fee was payable under Article 1, Schedule I on the value of the subject-matter in dispute in it, and not of the subject-matter in dispute in the suit. Indeed, there is no reason why this Article alone of Schedule I should be considered as a mere mechanical provision, while all the rest of the Articles of that Schedule are certainly substantive provisions. The Article is now considered by all the High Courts as a general provision applicable to matters for which provision is not made in the ss. 7 and 8, in Sch. II and elsewhere in the Act. This construction of the Article was confirmed by the Legislature in 1908 when by means of s. 155 and Sch. IV of the Code of Civil Procedure a substantive provision about the chargeability to court-fees of written statements pleading set-off or counter-claim and of memoranda of cross-objections was inserted in it, thereby showing that the Article was a charging provision and not merely one fixing the amount of court-fees chargeable under some other section. The Article provides for all suits and appeals in which *ad valorem* court-fees is payable.

**"Not otherwise provided for."**—The words "not otherwise provided for" refer to suits and appeals not specially provided for elsewhere in the Act. In 3 All. 108, *Ragobir Singh v. Dharam Kuar*, Stuart C. J., observed :—"I have little doubt they refer to plaints and memoranda of appeals mentioned in Sch. II of the Act." As stated in *Sekharam v. Eacharan*, 20 M. L. J. 121 "The court-fee payable on a document of any of the kinds specified in the first or second schedule of the Court-Fees Act is indicated in one of those schedules. *Vide* ss. 4 and 6 of the Court-Fees Act. Article I of Sch. I is a general Article indicating the fee payable in respect of a plaint or memorandum of appeal not otherwise provided for in the Act, that is, we take it, not falling under any other Article of the first or second Schedules, as it is those Schedules which indicate the fee." A suit for cancellation of an instrument comes within the residuary provision in this Article, as there is no specific provision for it in the Act, *Kalu Ram v. Babu Lal*, 54 All. 812 (F.B.). See also *Suraj Ket Prasad v. Chandra*, 1934 A.L.J. 955—1934 All. 1071; *Akhlaq Ahmed v. Mt. Karam Ilahi*, 1935 A.L.J. 133—1935 All. 207. In Madras, however, a specific provision for cancellation clause IV-A has been introduced in s. 7 by

**Madras Act V of 1922.** In C. R. P. 316 of 1932 (Madras, unreported), Walsh, J., held that a claim in a suit for restoration to the office of Archaka in a temple, which office carried with it certain income from the temple lands, etc., according to the allegation in the plaint came within this residuary Article, as there was no other provision specifically applicable to it in the Act. In the suit the plaintiff had claimed (1) an account of the income of the period of four months during which he was kept out of the office, (2) restoration to the office. He valued this second relief at Rs. 5 and paid *ad valorem* fee on it. The plaintiff alleged in the plaint that his loss of income during the period amounted to about Rs. 630. This was made up of his one-third share of the income from lands, a daily income of 8 annas due under a previous compromise with the defendants, and other perquisites. The District Munsif of Berhampore held that though the case did not directly come under s. 7, cl. iv (c), there being no declaration asked for, it was analogous to that section and should be charged under it. On the matter being taken in revision to the High Court his Lordship thought that the claim had a money value and referred to the similar case *Delrus Banoo Begum v. Kasee Abdur Rahman*, 23 W. R. 453 (455). In the end, the plaint was returned for proper valuation of the claim No. 2, his Lordship holding "The case in my opinion falls under Article 1, Schedule I, i. e., cases not otherwise provided for, and it is not permissible to apply analogies in such a matter. If the relief does not fall under section 7 clause 4 (c) of the Court-Fees Act and if it does not fall under any other specific section, than it must be brought under Article 1 Schedule I of the Act." In *Pandit Dhanukdhari v. Mani Sonar Tewari*, 6 Pat. 17, it was held that there being no provision in the Court-Fees Act applicable to a suit for assessment of fair and equitable rent, *ad valorem* court-fee is payable under Article 1 Schedule I which provides for fees payable on plaint, etc., "not otherwise provided for in the Act." A suit against a tenure-holder for enhancement of the rent of a tenure does not come within s. 7 cl. xi (b) of the Act, as he has no "right of occupancy" within the meaning of that clause. The words "right of occupancy" connote that the tenant should have actual and physical possession, which a tenure-holder has not. Nor does the suit come within any other specific provision in the Act. The suit is therefore "not otherwise provided for in this Act" within the meaning of Schedule I Article 1 to the Act. *Prasannadeb v. Purna Chandra*, 61 Cal. 513=38 Cal. W. N. 527=1934 Cal. 674. The value of the plaint in such a suit would be the difference between the rate claimed and the rate paid before, and the fee payable on the plaintiff's memorandum of appeal would be on the difference between the rate claimed and the rate allowed by the court below. *Ibid.* As s. 7 does not provide for appeals, this Article applies generally to appeals in the suits mentioned in that section, as well as to appeals not specifically provided for elsewhere in the Act.

**Value.**—Value must be taken to be the value assigned by the plaintiff in his plaint and not as found by the court unless the claim has been purposely or through gross negligence wrongly valued. *Muhammad v. Abulmuj*, 47 All. 534 = 85 I. C. 1055 and *Chunnilal v. Tricandam*, 89 I. C. 407.

Under this Article court-fee is payable on the value of the subject-matter in dispute. The question arises whether this "value" denotes the market value or the statutory value mentioned in s. 7. "Turning to the Court-Fees Act, we find the governing rule applicable to appeals is the one in Sch. I Art. 1 of the Act. It says, leaving out the unnecessary words, the proper fee payable upon a memorandum of appeal not otherwise provided for in this Act, presented to any Civil Court except those mentioned in s. 3 with which we are not concerned, is to be calculated on the amount or value of the subject-matter in dispute. The way in which the fee is to be fixed is by taking 'the amount or value of the subject-matter in dispute'. The question therefore really turns upon the interpretation to be put upon the expression 'the subject-matter in dispute' and 'its value'. Turning to s. 7, cl. 5 of the Court Fees Act we find that 'in suits for the possession of land, houses, and gardens the court-fee is to be calculated according to the value of the subject-matter'. The same words 'the value of the subject-matter' are used there, and it says 'such value shall be deemed to be' in the various cases referred to as mentioned in clauses (a) to (e). In the absence of any guiding rule in the Act itself as to computing the value in appeal it is proper to take the 'value of the subject-matter' in Sch. I, cl. 1 as meaning the same thing as 'the value of the subject-matter' as set out in various sub-clauses of cl. 5, s. 7." *Krishnan, J.* In *re Seethayamma*, 48 Mad. 652 = 47 M. L. J. 919 = 1925 Mad. 323.

An appeal is to be valued according to its subject-matter, which in some cases may coincide with that of the suit and in others not. The value of an appeal is not in all cases the value of the suit as originally filed but the value of the relief granted by the decree which a party wishes to get rid of. In *re Porkodi Achi*, 45 Mad. 245 = 41 M. L. J. 587 = 1922 Mad. 211. Where the subject matter of the appeal is identical with that of the suit, the appeal should not be valued differently from the suit.

**Value for purposes of appeal.**—The value must be taken to be that which the plaintiff put in the plaint. See cases cited under the foregoing heading. In *Budho v. Rabia*, 9 Lah. 23 = 107 I. C. 63 it was held that in cases where the plaintiff was given a decree for an amount which exceeded the value tentatively put by the plaintiff, the decree amount alone determined the forum for appeal. See also *Surendra v. Hafisur*, 13 I. C. 379. The value of an appeal is the value of the decree to the extent to which it is appealed against by the plaintiff against whom it is passed. In *re Seethayamma*, 48 Mad 652 = 47



I. C. 405 and *In re Porkodi Achi*, 45 Mad. 249=68 I. C. 444. The Court-fee payable on a memorandum of appeal is determined by the value of the subject-matter of the appeal and a suit may change its nature in appeal. *Har Lal v. Siri Ram*, 1931 Lah 633. An appeal is only the continuation of a suit and should be valued like it. *Firm of Muhammad Raharoo v. Ibrahim*, 98 I. C. 909. *Abdul Rahman v. Crisp*, 1930 Rang. 164. It is the amount or value of the subject-matter in dispute that determines the value for the purpose of court-fee. Consequently where only some portion of the claim is disallowed and an appeal is preferred against such disallowance, the value of the appeal is only the amount by which the decree is sought to be increased and conversely where a person appeals against the grant of a decree against him the value of the appeal is the amount to the extent of which the decree is sought to be reduced. If the valuation of the suit is incorrect, it is open to the appellant to depart from the valuation in the suit and value the appeal correctly even though the subject-matter is the same. *Bhagvan Puri v. The Secretary of State for India in Council*, 49 All. 398=1927 All. 338.

Where the valuation of the suit was put high but when the application to appeal as pauper was rejected the appellant gave up his claim to certain moveables, it was held that no bad faith could be inferred under the circumstances and the plaintiff could abandon his claim to any extent. *Rajendra Prasad Bose v. Gopal Prasad Sen*, 115 I. C. 678.

(1) **Conditional decree.**—It is quite immaterial in what form a suit is originally brought, provided the decree against which the appeal is presented attaches a definite condition as to the payment of a specified sum. Where a decree is in such a form, the relief sought being the removal of the condition precedent, court-fee is leviable on the amount so fixed. *Tikkaram v. Bosaram*, 1922 Lah. 440. See also *In re Sethayamma*, 48 M. 652=47 M.L.J. 919=1925 Mad. 323.

Where in a suit for possession the plaintiff was given a decree on condition that he paid off all the encumbrances on the property and he appealed against the condition, it was held that court-fee was payable in appeal on the amount of the encumbrances. *Kishen Dutt v. Kasey Pandey*, 5 Pat. L. J. 455.

(2) **Decree against several defendants.**—Where in suit for recovery of money against several defendants the plaintiff was given a decree against one of them only and he appealed praying for a decree against the rest also, it was held that the subject-matter of the appeal was the same as that of the suit as the plaintiff can execute the whole decree against any one defendant and that therefore court-fee was payable on the suit amount. *Anna Narayan Pavji v. Madhyama Shikthila Paraspara*, 46 Bom. 840=1922 Bom. 172. See also *Ramaswami v. Subbusami*, 13 Mad. 598. So also in the converse case of an appeal by some of the defendants against the decree, the value of the appeal is the whole decree amount. Where a suit for mesne profits was decreed against several defendants jointly

and an appeal was preferred only by some, it was held that the liability of the defendants could not be split up and that court-fee was payable on the entire value of the decree. *Dhanukdhari Prashad Pandey v. Ramadhikari Missir*, 12 Pat. 188=142 I.C. 617=1933 Pat. 81.

(3) **Separate Appeals.**—Where different defendants against whom a joint decree had been passed, filed two different appeals though they were entitled to file a joint appeal, it was held that full court-fee was payable on each of the appeals. *Panna Lal v. Marwar Bank*, 48 I. C. 424 (Punj.) ; see also *Umar Khan v. Mahomed Khan*, 10 Bom. 41.

(4) **Appeal by one of several plaintiffs.**—An appeal filed by only some of the parties need only to be stamped to the extent required by the interests of those parties. *Khale Khan v. Khair Din*, 10 Lah. L. T. 23.

(5) **Exoneration of property.**—Where a suit on a hypothecation bond is decreed wholly and some of the defendants appeal on the ground that their properties are not liable for the mortgage debt, court-fee is payable on the amount of the decree not exceeding however the market value of the property. *Venkappa v. Narasimha*, 10 Mad. 187 ; *Jugal Pershad v. Parbhu Narain*, 37 Cal. 914 ; *Madho Ray v. Musst. Bibi Mahmuwanissa*, 1927 Pat. 46. The value of the property is its market value and not its value under s. 7 at ten times the revenue. *Sarangapani v. Pitchu*, 1931 Mad. 710.

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Where the plaintiff appeals to make the properties exonerated by the decree from liability liable for the mortgage court-fee is chargeable on the decree amount or the market value of the property whichever is less. *Kesavarappa Ramakrishna Reddy v. Kottahota Reddy*, 30 Mad. 96 (F. B.) Where the trial court decreed the plaintiff's claim against the person and property of the 1st defendant, and refused to pass a decree against the assets of the deceased in the hands of defendants 2 to 5 and the plaintiff appealed asking for a decree against such assets in the hands of defendants 2 to 5, it was held that an *ad valorem* court-fee ought to be paid on the value of such assets or on the amount claimed by the plaintiff in the appeal, whichever was less. *Sabir Husain v. Farzand Hasan*, 54 All. 608=138 I. C. 622=1932 A. L. J. 387=1932 All 406. It was held in this case that the assets of the deceased in the hands of the defendants 2 to 5 had a money value and that Art. 17 cl. (6) could not apply to a property which clearly had a money value, although it may be difficult to estimate such value correctly.

(6) **Several defendants and several items of property.**—Where a decree is passed declaring the liability of the several properties separately for varying specific sums and one of the defendants appeals to exonerate his property from liability for the amount for which it is declared liable, the value of the appeal is that amount and

not the whole decree amount, *Chabraji Kunwar v. Court of Wards*, 35 All. 92. *Kale Khan v. Khair Din*, 10 Lah. L. T. 23.

**(7) Appeal against marshalling of securities.**—Where in a suit for sale of mortgaged properties the decree was that one of the properties be proceeded with first and that the other proceeded with only for realisation of the balance if any left, and the plaintiff appealed to make the other property also immediately liable, it was held that the relief was incapable of valuation and fell under Sch. II, Art. 17, *Ujagaral v. Mohan Kuar*, (1886) 6 A. W. N. 312.

But where a vendor sued for the balance of sale price of a house and shop and the decree was that the money be realised in the first instance from the house and the deficiency if any from the shop and the transferee of the shop appealed regarding its liability under the decree, it was held that the stamp to be paid was on the value of the decree not exceeding the value of the shop. *Atma Singh v. Nathu Mal*, 7 Lah. 215 = 1926 Lah. 408.

**(8) Decree restricting possession.**—Where the suit was for possession and a decree was given for possession limited to the life-time of a certain person and the plaintiff appealed for absolute possession without any condition it was held that court-fee was payable under Sch. II, Art. 17 as for a declaration only. *Rup Chand v. Fateh Chand*, 33 All. 705.

**(9) Instalment decree.**—Where a decree ordered payment by instalments and the plaintiff appealed for immediate payment, it was held that the value of the appeal was the difference between the present worth of the instalments and the suit amount. *Lakhus Chundar Ash v. Khoda Baksh Mondal*, 19 Cal. 272; *Lala Goyinda Lal v. Rao Baldeo Singh*, 24 I. C. 931.

**(10) Question of priority.**—Where in a mortgage suit the property was ordered to be sold subject to a prior charge in favour of one of the defendants and the plaintiff appealed for removal of the priority, it was held that the subject-matter was not a mere declaration but was the amount of the prior mortgage. *Premsookh Das v. Shah Gopi Saran*, 4 Pat.L.J. 323 = 51 I.C. 786. The appellants were impleaded as defendants in a suit for sale on a mortgage upon the allegation that they were subsequent mortgagees. They claimed to be prior mortgagees but the trial court found that they were subsequent mortgagees and decreed the plaintiffs' suit. The defendants appealed and prayed for a declaration that they were the prior mortgagees and paid Rs. 10 as court-fees as for a declaration. The court held that Art. 17 (iii) of Sch. II had no application and that court-fees should be paid *ad valorem* on Rs. 1,600 the value of the appellants' interest in the property. *Kundan Lal v. Duli Chand*, 54 All. 347. With regard to the contention that the relief in appeal was only declaratory and that Art. 17 applied, his Lordship observes "I hold that the clause mentioned has no application to the facts of this case. That clause applies to a memo

randum of appeal *in a suit* to obtain a declaratory decree where no consequential relief is claimed. In the present case we have a memorandum of appeal in a suit of a totally different nature, namely, a suit for sale on a mortgage. If the appellants' contention were accepted, I think it would be always possible for a defendant, against whom a decree has been passed, to appeal against the decree on payment of a fixed court-fee of Rs. 10, by the simple device of asking for a mere declaration that the decree is erroneous and not binding upon him. Supposing a money decree for Rs. 10,000 is passed against a defendant. He might in his appeal ask for a mere declaration that the decree is erroneous and that he is not liable to pay anything to the decree-holder, and might thus claim to file the appeal on a fixed fee of Rs. 10 only. Whatever may be the view of the appellate court regarding the form in which the relief sought by the appeal has been framed, I think it is clear that Art. 17 (iii) of Schedule II has no direct application, and I see no reason for applying the principle of that clause by way of analogy. . . . I think the substance of the relief sought, and not merely its form, must be considered." See also *Mothi Begum v. Har Prasad*, 16 A. L. J. 81. In *John v. Suraj Bhan*, 54 All. 553, the plaintiff sued a company and certain debenture holders for the recovery of a certain amount and for a declaration that the amount was recoverable in priority over the debentures. The claim for money was decreed against the company and the declaration sought was granted. The debenture-holders appealed to set aside the decision as to the declaration of priority. It was held that court-fee was payable *ad valorem* on the decretal amount or the value of the debentures whichever was less. It was observed that the fee payable was not Rs. 10 as for declaration under Art. 17 (3), as the appeal did not arise from a suit for mere declaration without consequential relief.

**(11) Appeal by mortgagor challenging portion of decree in favour of a puisne mortgagee.**—In a suit for sale on a mortgage, the mortgagor and the puisne mortgagee were impleaded as defendants. The mortgagor denied the puisne mortgage but the court held that the mortgage was true and enforceable and gave a direction in their decree that the balance of the sale proceeds which might remain after paying off the plaintiff's mortgage should be paid to the said puisne mortgagee and the surplus, if any, should be paid to the mortgagor. The mortgagor appealed on a fixed court-fee under Art. 17 cls. (iii) and (vi) contending that he wanted only a declaration that the mortgage in favour of the contesting respondents did not exist and that as it was uncertain what amount would be realised in sale and what surplus would remain for disposal according to the decree after paying off the plaintiff's mortgage, the appeal was incapable of valuation. The court over-ruled the contention and held that *ad valorem* court-fee must be paid on the amount of the mortgage. *Kharaiti Ram v. Chuni Lal*, 146 I. C. 1003=1933 Lah. 954.

**(12) Interpleader suit.**—In an appeal from a decision in an interpleader suit regarding money, the court-fee payable is a fixed

fee for declaration under Sch. II, Article 17 and not *ad valorem* under this Article. *Brijnarayan v. Balmiki Prasad*, 61 I. C. 820. (Pat.)

(13) **Change of law.**—The valuation of an appeal for purposes of court-fees must be according to the law in force at the time of its presentation and not according to a law which has become obsolete then. 5 M.H.C.R. App. 44. (Proceedings dated 15th November 1870). But the jurisdiction value of the suit would remain unchanged notwithstanding subsequent change in law so that all vested rights which accrued to a party at the institution of the suit including the right to appeal to a particular form, is preserved. *Daivanayaka Reddi v. Renukambal*, 50 Mad. 857 (F. B.)

(14) **Appeal against part of decree going to the root of the case**—Where one of the defendants takes a ground in his appeal such as misjoinder of parties or limitation which goes to the root of the whole of the plaintiff's case and would entail the dismissal of the whole suit even as against other defendants, court-fee is payable on the entire decree amount and not merely on the portion of it with which the appellant is concerned. *Dilwar Hussain v. Bhagwat Das*, 4 A. L. J. 130; *Bujhawan Rai v. Mukund Lal*, 15 All. 112; *Hukam Singh v. Shahab Din*, 44 I. C. 890.

(15) **Appeal apparently against whole decree but really against a part thereof.**—It is an anomaly of the law of Court-Fees that a person who appeals only against a part of the decree should have to pay more court-fee than the one who appeals against the whole of it. But a litigant is entitled to appeal against the whole of a decree though he intends to attack only a part of it. *Nazar Muhammad v. Kala Ram*, 9 Lah. 563 = 1929 Lah. 190. He can make use of camouflage and apparently appeal against the whole decree. *Pathumma v. Aligama Kanaketh*, 1928 Mad. 929.

(16) **Objection not taken in memorandum of appeal.**—The appellant is not entitled to value his appeal on the assumption that a ground that he proposes to take in argument, which he has not even taken in his memorandum of appeal is on the face of it likely to be successful. *Phulartand Coal Co. v. Burrakar Coal Co.*, 11 Pat.L.T. 629 = 1930 Pat. 605.

(17) **Second appeal on reduced claim.**—Where a plaintiff claimed an assessment of rent at Rs. 10 per Katha and was awarded Rs. 3 by the first appellate court, the value of the plaintiff's claim is reduced in second appeal and court-fee is payable only on such reduced claim. *Dhamukhdari Jewari v. Mani Sonar*, 6 Pat. 17 = 1927 Pat. 123.

(18) **Separate Second appeals arising out of a single suit.**—Where two distinct and separate appeals arise out of the same suit though filed by the same person as appellant against decrees in two appeals in the Lower Appellate Court, full court-fees must be paid on each appeal. *Shib Dayal v. Mehabran*, 43 A. 56.

**(19) Pre-emption suit and appeal by vendee.**—Where the vendees appellants challenged the right of the pre-emptors to bring the suit for pre-emption and also claimed the balance of the purchase money which had not been allowed to them, it was held that the fees payable by them is for the amount originally paid by the pre-emptors. It was observed that had the appellants not challenged the pre-emptor's right they would have had to pay on the value of the cash balance claimed. *Harichand v. Attar Singh*, 1931 Lah. 490.

Where in a pre-emption suit the defendants admitted the plaintiff's right and the trial court gave a decree to the plaintiff and fixed the market price as claimed by the defendants and the plaintiff appealed stating that the real market price was a smaller amount and paid court-fee only on that, it was held that the court could not dismiss the entire appeal but should hear the same to the extent that court-fee had been paid. *Amirshah v. Syedshah*, 1931 Lah. 237. Where a suit for possession of house by pre-emption is decreed on payment of Rs. 700, the court-fee on memorandum of appeal should be paid *ad valorem* on that amount. *Ram Labhya v. Vaid Parkash*, 1934 Lah. 424.

**(20) Partition suit.**—If in an appeal in a partition suit the appellant claims sums as due from the other party further than what was awarded by the lower court, court-fees should be paid *ad valorem* on the amounts claimed. *Peshawri Dal v. Jai Kishan Das*, 33 P. L. R. 12; *Sukha Nand v. Mt. Shiv Devi*, 1935 Lah. 14.

Where the appellant not only claims sums from the other party but also pleads that he should not have been made liable for certain other sums, court-fee is payable on the several sums on the *ad valorem* scale. *Jai Deyal v. Narain Das*, 32 P. L. R. 854.

**(21) Redemption suit.**—The fee payable is *ad valorem* on the amount by which the decretal amount is sought to be reduced. *Hira Lal v. Mulchand*, 1930 Lah. 601. See also *Harihar Bahksh Singh v. Lachhman Singh*, 11 O.W.N. 559=1934 Oudh 246 (Cross-objections in appeal arising out of redemption suit).

The court-fee payable on a memorandum of appeal is determined only by the value of the subject-matter of the appeal. A suit may change its nature in appeal and though the original suit may be for redemption, the appeal might relate only to the mortgage amount. In such a case the court-fee payable is *ad valorem* on the sum in dispute under this Article. It will be different, however, if the suit is dismissed and the plaintiff is the appellant. *Harlal v. Sriram*, 1931 Lah. 633. See also under s. 7, cl. ix.

**(22) Appeal in suit to contest notice of ejectment.**—Appeal by the landlord defendant in a suit to contest notice of ejectment and compensation seeking to get rid of the liability to compensation must bear *ad valorem* court-fee on the amount of compensation claimed. But if the plaintiff tenant appeals claiming non-ejectment and in the alternative more compensation he has to pay court-fee in

appeal only on the value of the suit, *i. e.*, one year's rent. *Hoshnak Rai v. Ghulam Mustafa*, 11 Lah. L. T. 116.

(23) **Land Acquisition Appeal.**—Where in Land Acquisition cases the amount of compensation is in dispute in appeal, court-fee should be paid on the *ad valorem* scale on the difference between the sum awarded and the sum claimed. *In re Ananda Lal Chakrabutty*, 35 C. W. N. 1103. Proceedings before the court on a reference by the Collector under the provisions of s. 19 Land Acquisition Act cannot be described as a suit to set aside an award within the meaning of the provisions of Sch. II, Art. 17 and court-fees are payable in the appeals *ad valorem* on the difference between the sum awarded by the court and the sum the appellant claims. *Special Collector of Rangoon v. Ko Zi Na*, 6 Rang. 281=1928 Rang. 197; *Secretary of State for India v. Baij Nath*, 138 I. C. 199=1932 Oudh 224

Where the dispute is between two rival claimants and the compensation money is in *custodia legis*, a mere declaration by the appellate court as to who is entitled to it will be sufficient and a fixed fee is sufficient. *Thammayya Naidu v. Venkataramanama*, 55 Mad. 641=139 I. C. 131=62 M. L. J. 541=1932 Mad. 438.

**Rejection of plaint or memorandum of appeal.**—It is a decree under s. 2 (2), C.P.C. and is appealable as such, and the court-fee payable in such appeal is not under Sch. II, Art. 11. But there is a difference of opinion as to the amount of court-fees payable.

**Madras.**—Schwabe, C. J., has held in S.<sup>2</sup>R. 1923-23 (unreported) that court-fee payable is *ad valorem* on the additional amount which was demanded by the lower court and for non-payment of which the plaint was rejected. A short note of this decision appears in 17 Law Weekly, Summary of Recent Cases, p. 33. The judgment not being reported in any of the law journals in spite of its importance, the following extract is set out. "The plaintiff brought a suit in the court of the subordinate Judge and for purposes of stamp, valued the subject-matter of the suit at a certain figure. The subordinate Judge held that that calculation was on a wrong basis and that the amount at which the suit should have been valued for stamp purposes was a higher one. The plaintiff was called upon to pay the full amount and having failed to do so, an order was passed rejecting the plaint. The plaintiff appealed and the question referred to court was what was the court-fees payable on this memorandum of appeal. There are two points taken. First it is argued that the memorandum of appeal in this case comes under Sch. II, Art. 11 of the Court-Fees Act of 1870 as amended by Madras Act V of 1922. That article runs: 'Memorandum of appeal, when the appeal is from an order inclusive of an order determining any question under s 47 or s. 144, C. P. C. of 1908'; and when it is presented to a High Court, it carries a fixed-fee of Rs. 2 only. It is argued that this appeal is from an order. On the other hand Sch. I, Art. 1 provides an *ad valorem* scale of fees payable in respect of 'a memorandum of appeal not otherwise provided for in this

Act', and the question is whether this memorandum of appeal is 'otherwise provided for by this Act,' that is, as a memorandum of appeal against an order. On the words of these two Articles standing alone the answer would be that it is an appeal from an order. But I do not think it possible to take those words away from their context. Throughout the Act references are made to the Code of Civil Procedure and it is quite clear that words are used again and again the meaning of which can only be discovered by looking to the Code which governs the procedure of the Courts to which the court fees are to apply. Looking at the Code of Civil Procedure, s. 2 (14) defines an 'order' as the 'formal expression of any decision of a Civil Court which is not a decree,' and, in my judgment, the word 'order' in Art. 11 of Sch. II of the Court-Fees Act has the same meaning. To ascertain whether an order is a decree or not one has to look at s. 2 (2) of the Code of Civil Procedure and there one finds "'decree' means the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit," and it goes on. 'It shall be deemed to include the rejection of a plaint' and certain other matters. Now the words 'shall be deemed to include' are rather difficult words, because I think it is right to say that if it is necessary for a statute to say they are to be deemed to include, it means that, unless the statute had said so, they would not be included, and I think the true view of such words is that a statute, which is defining for purposes of the statute certain expressions which have ordinary meanings, as soon as it includes things not covered by the ordinary meaning of the words by saying that they are to be deemed to include, is setting up a statutory meaning of the words irrespective of their true ordinary meaning: and those things which are by statute to be deemed to be decrees are to be treated for all purposes to which that statute applies as being decrees. For purposes of appeal, for instance, or for any other purposes of the Code itself, orders rejecting plaints are decrees, and it follows that for purposes of the Code of Civil Procedure they are not orders within the meaning of s. 2 (14). I think that the Court-Fees Act, which itself contains no definition of either the word 'order' or the word 'decree' must have meant to follow the definition contained in the Code of Civil Procedure, and I am strongly confirmed in this view by the words of Art. 11 of Sch. II which include in the word 'order' orders determining questions under ss. 47 and 144 of the Code of Civil Procedure. These are orders and it is quite unnecessary to say that the words 'Memorandum of appeal when the appeal is from an order,' are to include these orders if they would be included without their being specifically mentioned; and when one looks to find why it is that the Court-Fees Act has gone out of its way to say that 'order' in Art. 11 of Sch. II shall include two particular named orders, one finds the solution very ready to hand by looking at the definition of decree in the Civil Procedure Code because that



definition deems as decrees not only orders rejecting plaints but also orders under ss. 47 and 144, the very things referred to in Art. 11 of Sch. II of the Court Fees Act; and it is to be observed that, though those two are included in the word 'order' no doubt because they would otherwise be excluded as being things to be reckoned amongst decrees and not amongst orders, an order rejecting a plaint, which is to be deemed to be a decree under the Code of Civil Procedure, is not included under Art. 11 of Sch. II of the Court-Fees Act. It follows in my judgment that an order rejecting a plaint is not otherwise provided for in this Act, that is, otherwise than under Sch. I, Art. 1. It is, therefore, in my judgment, a memorandum of appeal not otherwise provided for, and Sch. I, Art. 1 applies.

The second question raised is, assuming this is to be treated as a memorandum of appeal from a decree, what is the subject-matter in dispute? Because it is the subject-matter in dispute which governs the rate of fee payable. On the one hand it is contended that either it is incapable of valuation and therefore comes under Sch. II, Art. 17-B, in which case there would be a fixed fee payable of Rs. 100, or alternatively that the subject-matter in dispute is the difference between the stamp claimed by the lower court and the stamp which the plaintiff is prepared to pay, namely Rs. 1,187-6-0. The Crown, on the other hand, contends that the subject-matter in dispute in the suit, that is to say, if the suit involves title to lands of, say of the value of a lakh of rupees, and the question on appeal was whether the stamp charge should be a hundred rupees or a thousand rupees, the court-fees payable on appeal would be on the lakh value of the land. It is agreed that the subject-matter in dispute means the subject-matter in dispute on appeal, and it would indeed be strange if the position were this: that if the whole case had been heard and there had been a decision of one point upon which the plaintiff wished to appeal, he would in coming up to this court only have to pay court-fee based on the value of the item in respect of which he was appealing; while, if his case had not been heard at all, and the question was about the maintainability of the suit, in order to come up to this court to ask that the case should be heard, he would have to pay a court-fee equal to what he would have had to pay if he had lost the whole of the suit and had desired to appeal in respect of the whole. It is almost inconceivable to my mind that the legislature could have intended such a result, and, unless one is driven to the conclusion by very clear words that that was the intention of the taxing statute, it would be, in my judgment, impossible so to hold. I find no clear words in this Article to drive me to that conclusion. I think that the subject-matter in dispute, meaning subject-matter in dispute in appeal, has the simple meaning applicable to those case namely the amount of stamp in dispute between the parties. There is authority in support of this view in *Durga Prasad v. Raghubar Dial*, (1882) 2 A. W. N. 244, where a bench arrived at the same conclusion, after arguments but

without expressing its reasons. There is authority apparently against this view in the case of *Surendra Narain Sinha v. Hafijur Rahaman*, 30 I. C. 378. In that case the point argued before me was not raised, the decision as to it was not necessary for the decision of the case and no reasons were given for the decision; and I venture to disagree with that part of that decision. Other authorities there are none, though there have been cases in which it would appear that fees have been paid not on the scale which I am now holding is applicable but on some higher scale, but I can find no case where the point has been taken and argued and decided.

If the subject-matter in dispute were not the difference in the two fees, then I think it would be a subject-matter which is incapable of valuation. The question is whether this case has to be heard or not and I confess that I have had very considerable doubt whether it is not more correct to say that the real subject-matter is whether the case is to be heard or not and not what fee is to be paid: but, on the whole, I think where there is a definite amount of stamp in dispute and the question to be determined is whether that amount was properly demanded and was payable one can value the subject-matter in dispute and I have come to the conclusion that as between the application of Art. 1 of Sch. I and Art. 17 of Sch. II, I must hold in this case that Art. 1 of Sch. I applies."

**Allahabad.**—The same is the view of the Allahabad High Court. *Durga Prasad v. Raghbir Dial*, (1882) 2 A. W. N. 244.

**Calcutta.**—When the plaint was rejected for insufficiency of court-fees and the plaintiff preferred an appeal valuing it in the same way as the plaint, it was held that the appellate court was bound to go into the question of the true value of the properties and that without coming to a finding on this question it could not hold that the appeal was insufficiently stamped. *Amartalal Kumar v. Sisir Kumar*, 1927 Cal. 427.

**Bombay.**—Where a plaint is rejected for insufficiency of court-fees and the plaintiff files an appeal disputing the correctness of the amount demanded by the Lower Court, the Taxing Officer was of opinion that the fee payable on the memo of appeal was only that paid on the plaint and gave very cogent reasons therefor in his reference to the Chief Justice on the point.

"An appeal has been filed against the order, and the main contention of the appellant is that the view taken by the Subordinate Judge as regards the valuation of the claim and the applicability of the sections of the Court-Fees Act as laid down by him is erroneous. This being so, a taxing officer would be exceeding his power were he to take upon himself to decide the very question on which the Appellant by the memorandum of his appeal seeks for a judicial decision of the Court after argument on both sides. He is, therefore, usurping the powers of the court and would be in reality

assuming to himself the appellate powers over Subordinate Judges. In this view of the case, I think the memorandum of appeal would be sufficiently stamped, if the appellant pays the same amount of court-fees which he paid on his plaint in the Court of first instance." But Birdwood, J., held that the reliefs sought in appeal were the same as those in the plaint and should be accordingly valued. *Raghunath v. Gangadhar Bhikaji*, 10 Bom. 60.

**Lahore.**—The court-fee paid was on ten times the revenue, but the Court held it was payable on the market-value. As the plaintiff did not pay additional fee the plaint was rejected. It was held that the order rejecting the plaint was a decree and that the memorandum of appeal from that decree must bear an *ad valorem* court-fee. In the circumstances of the case it was unnecessary for the Court to decide what was the amount of fee payable, and it was observed "it was the appellant's duty to pay the fee at least on the valuation which he had himself placed upon his claim." *Shahu v. Bakri*, 3 Lah. L. J. 237 = 1921 Lah. 43.

**Nagpur.**—In *Govinda v. Bansilal*, 1927 Nag. 100, the relief was held to fall under Sch. II, Art. 17 as incapable of valuation, but in *Harikar Rao v. Sahu Bai*, 1927 Nag. 256 (258) it was held that the fee payable on the memo of appeal was *ad valorem* on the value arrived at by the Lower Court. The matter came up recently before a Full Bench of the Court, when the majority (Grille, J. C. & Pollock, A. J. C.) held that where an appeal is filed from an order rejecting a plaint for failure to pay additional court-fee demanded, the subject-matter in appeal was capable of valuation, that as the order rejecting the plaint was a complete and final determination of the rights of the parties the subject-matter in appeal was the same as the subject-matter in the original suit, and that the same court-fee was payable on the appeal as on the plaint. In the opinion of the dissenting Judge in the case (Niyogi A. J. C.), the rejection of a plaint means only a refusal to entertain the suit and can in no sense imply a conclusive determination of the rights of the parties with regard to the matters in controversy in the suit. All that can, with strict accuracy, be said about the rejection of the plaint is that it conclusively determines that the plaintiff is not entitled to bring his suit on any court-fee stamp of a value less than what has been found by the court. The matter in dispute is whether the appellant is liable to pay the court-fees demanded of him or not; and this issue can be regarded as being the subject-matter of the appeal. See *Ganpati v. Venkatesh*, 1935 Nag. 83 (F. B.).

**Patna.**—An order rejecting a plaint is a decree and a memorandum of appeal regarding the same must be stamped in the same way as the plaint. *Munshi Mahton v. Lachmanlal*, 10 Pat. L. T. 545 = 1929 Pat. 615.

**Restitution orders.**—In *Bajinath Das v. Balmukand*, 47 All. 98, it was held that an appeal from an order passed on an application for restitution under s. 144 of the Code of Civil Procedure requires to

be stamped *ad valorem* under Article 1 of the first schedule to the Court-Fees Act, 1870, as an appeal from a decree. *Siva Ram v. Nand Ram*, 44 All. 407; *Brij Lal v. Damodar Das*, 45 All. 555 and *Balmakund v. Basanta Kumari Dasi*, 3 Pat. 371 were referred to. See also *Guru Muhammad v. Sabz Ali Khan*, 1930 Lah. 24. But in *Moti Singh v. Harbujan Singh*, 1927 Lah. 635, it was held that an appeal from an order under s. 144, C.P.C. does not according to the practice of the Lahore High Court require *ad valorem* fee but a court fee stamp of Rs. 4 is sufficient. In *Gubba v. Kanchhedilal*, 1922 Nag. 62 the decree-holder had obtained possession under the final decree for foreclosure, which was set aside in appeal. The application of the judgment-debtor for compensation under s. 144, C.P.C., was dismissed and he appealed against the order. It was held that the question of compensation related to the execution, discharge, or satisfaction of the decree in appeal and being thus an order coming within s. 47 of the Code the court-fee of 8 as. paid on the memorandum of appeal to the District Judge was sufficient. In Madras, Art. 11 of Sch. II specifically provides for appeals against such orders.

**Award—Appeal against decree in terms thereof.**—In *Gowri Shankar v. Ananda Ram*, 1926 Lah. 403, it was held by Broadway, J., that where a decree is passed in terms of an award on a reference under the C. P. C. the court-fee for an appeal from such decree is *ad valorem* under Sch. I, Art. 1. "It was argued that inasmuch as the order filing the award was appealable under s. 104 (f), C. P. C. such an appeal would be with a court-fee of Re. 1. As a matter of fact there are authorities which lay down that although an appeal under s. 104 (f) is competent notwithstanding the fact that an award though filed has been the basis of a decree in its terms, nevertheless the court fee payable on such an appeal would be *ad valorem*. See *Dharan Das v. Ajuadhaya Prosad*, 70 P. R. 1881 and *Hari Mohan v. Kali Prasad*, 33 Cal. 11."

### Mesne Profits.

**Order 20, Rule 12, C. P. C.**—When a preliminary decree is passed declaring the right to mesne profits subsequent to suit and ordering an inquiry as to the amount of the mesne profits, and an order is afterwards made determining the amount of profits the order is a final decree and not a proceeding in execution and an appeal against that order requires *ad valorem* court-fee on the amount of mesne profits in dispute in appeal. *Balaram Naidu v. Sangam Naidu*, 45 Mad. 280.

A memorandum of appeal from an order dismissing an application for ascertainment of mesne profits must be stamped *ad valorem* on the amount claimed. *Narain Prasad v. Sheo Kameswar Prasad Singh*, 3 Pat. L. J. 101.

An appeal from an order determining the amount of mesne profits and made on an application for ascertainment of them requires *ad valorem* fee calculated on the amount by which the amount awarded

in the lower court is sought to be enhanced or reduced, though the application in the lower court for the ascertainment of profits being only an application need be stamped only under Sch. II Art. 1. But the memorandum of appeal is different from the application and has to be stamped on the value of the subject-matter under Sch. I Art. 1. *Kedar Nath v. Chandra Mauleshwar*, 11 Pat. 532. See also *Dhamukdhari Prasad v. Ramadhihari*, 12 Pat. 188. This rule applies to all appeals whether the profits may have accrued before suit or after the institution of the suit. *Sideshwari v. Ram Kumar*, 12 Pat. 694. An order determining the period for which mesne profits shall be payable is a decree and an appeal lies therefrom, and *ad valorem* court-fee is payable in the appeal, *Nand Kumar Singh v. Bilas Ram Marwari*, 3 Pat. L. J. 67. In this case the plaintiffs had sued (1) for possession of property; and (2) for recovery of mesne profits to be ascertained in execution proceedings. The plaint did not disclose the amount claimed as mesne profits and no court-fee was paid on the claim. A decree for possession with mesne profits from the date of the decree was passed. The mesne profits were directed to be ascertained in the execution proceedings. This decree was affirmed by the High Court and subsequently by the Privy Council. The plaintiffs took out execution and obtained delivery of possession of the property. They then filed an application for ascertainment of mesne profits from the 28th November 1905 the date of the original decree, to the 29th May 1914, the date of delivery of possession. The mesne profits were estimated at Rs. 5,50,656-2-3. On the objection of the defendants the executing court held that mesne profits were payable from the 7th March 1913 the date of the Privy Council decree, and not from the date of the original decree. The decree-holders preferred a Miscellaneous Appeal on a court-fee of Rs. 2. At the hearing it was objected by the respondents that no appeal lay and that the court-fee paid was insufficient. On these contentions the court held as follows (p. 69): "The question whether an appeal lies or not has to be determined with reference to the definition of the word 'decree' in the Code of Civil Procedure. If the order by the learned Subordinate Judge amounts to a decree within the terms of that definition then an appeal lies, otherwise there is no appeal. In that definition it is said that a decree means the formal expression of an adjudication which so far as the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit, and may be either preliminary or final. This order by the learned subordinate Judge certainly appears to be a conclusive determination of the right of one party to an account for certain years in the suit and the dismissal of the claim of that party for certain other years in suit. It is therefore in my opinion a decree within the meaning of that definition, and this view of the matter has the support of the judgment of the Privy Council in the case of *Bhup Indar Bahadur Singh v. Bijai Bahadur Singh*, 23 All. 152. . . . I would therefore hold that an appeal lies.

In regard to the amount of the court-fee payable it cannot be said to be a case in which the value of the appeal cannot be ascertained. The appellant hopes, if he succeeds in this appeal, to obtain a large sum which he has stated in his plaint. The court-fee payable is, therefore, in my opinion an *ad valorem* fee." The practice of allowing plaintiffs to include in a suit for recovery of land a claim for mesne profits without paying any court-fee on the amount claimed as mesne profits was condemned as wrong, their Lordships observing (p. 70): "A suit for mesne profits is a suit for money demanded as damages or compensation, and in that sense it is to be assessed with an *ad valorem* fee even if it be regarded as a suit for an account. The Court-Fees Act, section 7 (iv), in its last clause is peremptory that any such suit shall be approximately valued. The same provision has now been introduced into the Civil Procedure Code. The old practice of allowing plaintiffs to include in a suit for land a suit for money as mesne profits without paying any court-fee upon the mesne profits was undoubtedly wrong, and in my view a circular should be issued to the lower courts drawing attention to this error in practice."

In *Collector of Etawah v. Bindraban*, 1931 All. 538, the suit was for recovery of possession of land and mesne profits estimated at Rs. 15,106-12-7. Possession was decreed. As regards the mesne profits, the order was: "The amount of mesne profits will be settled in the execution department." The plaintiff then made an application for a final decree under O. 20 r. 12 (2) C. P. C., but it was disallowed on the ground that the judgment did not direct payment of any mesne profits to him. He appealed against this order. It was held that the order appealed from was an order made in the suit itself and not in execution proceedings and was a decree and that *ad valorem* court-fee was payable in the appeal on the abovesaid amount claimed by plaintiff and negated by the order of the lower court.

**Appeal against preliminary decree directing ascertainment of mesne profits.**—Where a defendant appeals from a decree for recovery of possession and antecedent mesne profits, the latter being directed to be ascertained in execution, the memorandum of appeal should bear court-fee stamps also upon the amount of mesne profits as estimated in the plaint, *Bunwan Lal v. Daya Sankar Misser*, 13 C. W. N. 815; *Manik Chand Ram v. Bibi Najiban*, 49 I. C. 962 (Pat.) See also the recent decision in *Deonandan Misra v. Ganga Prasad*, 8 Pat. 906. In that suit, the claims for possession and antecedent mesne profits were valued respectively at Rs. 900 and Rs. 1,184-3-6, in all Rs. 2,084-3-6. The suit was decreed, the mesne profits being directed to be determined in a separate proceeding. Defendant preferred an appeal to the District Judge against the whole decree but valued his appeal only at Rs. 900, and paid a portion of the court-fee due on Rs. 900. On the 19th September 1927 (which was the last day of limitation), the deficit court-fee on Rs. 900 was paid, but the valuation was not even then made to include the mesne profits. On that day the District Judge directed

that the appeal should be valued at Rs. 2,084-3-6 and the deficit court-fee paid within the period of limitation. The appellant took no steps till the 2nd of November, when a petition was filed on his behalf which merely submitted that the appellant was not bound to pay court-fee on the decree for mesne profits. As no court-fee was paid on the mesne profits, the District Judge dismissed the appeal on the ground of limitation. On second appeal by the defendant to the High Court, it was held (i) that the appellant was bound to value his appeal against the whole decree at the same amount at which the subject-matter was valued by the plaintiff in the first court, (ii) that in the circumstances of the case s. 149 of the C. P. C. was not applicable and delay could not be excused. After expressing their full concurrence with the decisions in 13 C.W.N. 815 and 49 I. C. 962 mentioned above, their Lordships observe at p. 910. "The second contention is that in the circumstances the provisions of s. 149 of the Code of Civil Procedure should be applied. It is urged that there was at least some room for doubt in the minds of the appellants whether court-fee on the mesne profits or at least on the sum of Rs. 1,184-3-6 was payable in appeal, and reference is made to the decision of this court in 8 Pat. L. J. 74, where it is suggested that the court may exercise its discretion in favour of the appellant when the question of the amount of the court-fee is open to doubt or when an honest attempt appears to have been made to comply with the law. On the other hand, Mr. Siveshwar Dayal on behalf of the respondents has pointed out that appellants throughout maintained the position that no further court-fee was payable at all and that they could not be in any doubt, as the initials of their legal adviser appear against the order of the 19th September in which attention is drawn to 13 C. W. N. 815. The appellants in my judgment were never in any doubt and they made no real attempt to comply with the law. The fact is that at the time they were not in a position to pay the court-fee. Manifestly they experienced difficulty even in collecting money to pay the court-fee on a valuation of Rs. 900. They paid less than half the court-fee on that valuation at the time of valuing the appeal and could not pay the balance on the last day of limitation. It is a safe inference that on the day they would not have been in a position to pay the court-fee on Rs. 2,084-3-6, and they asked for no extension of time in which to pay. Accordingly this is not a case in which any application of s. 149 of the Code of Civil Procedure is admissible. The second plea also fails". The Calcutta and Patna decisions do not appear to have been taken to the notice of the Division Bench who decided *Kandunni Nair v. Ittunni Rama Nair*, 53 Mad. 540, where it has been held *contra*. The plaintiff brought the suit as manager of the tarwad for partition and possession with a prayer for past mesne profits. The lower court passed a preliminary decree for partition which directed that the amount of mesne profits due to the tarwad shall be determined at the time of passing the final decree. The judgment decided that only

three years' mesne profits are awardable, but this decision was not carried into the decree. Their Lordships observed thus:— "In his judgment the learned Subordinate Judge has found that the claim to mesne profits prior to three years before suit is barred although he does not in express terms award mesne profits for this period. He adds that the rate will be determined at the stage of the final decree. The preliminary decree embodies this latter direction but makes no reference to the term of three years. There is accordingly no sum certain fixed in this respect upon which the court fee can be paid by the appellant. The alternatives seem to be either that he should pay no fee at all or, as was held, we think *obiter*, in 52 Madras Law Journal 128, that he should pay it on the valuation given in the plaint. With much respect to the learned Judges who expressed that view, we can find no sufficient justification for adopting this latter course. The decree, which we must follow in preference to the judgment, contains no more than a direction for the determination of the mesne profits and accordingly it is difficult to apply the terms of Sch. I of the Court-Fees Act, where it is said that the fee is to be payable on the amount or value of the subject-matter in dispute. The appellant asks us to adopt the position that in the case of all decrees for possession and mesne profits it is only necessary to appeal against that part of the decree which awards possession, because if it be set aside the award of mesne profits must necessarily go with it. We need not go so far as to discuss the tenability of this view. Where however a preliminary decree only makes provision for the subsequent determination of the mesne profits we think that the apt occasion for requiring a defendant to pay a court-fee in this respect would be if and when the profits have been determined by a final decree. To require him to pay now a court-fee upon the profits as estimated in the plaint, where there is as yet no question as to their amount but only as to the right of the plaintiff to receive them, appears not only difficult to justify on principle but also to lead to the difficulty that if the defendant subsequently has to appeal against the amount of mesne profits awarded by the final decree, he would pay court-fee twice over. We do not think therefore that at the present stage the fee payable should comprise this item" *Kandunni Nair v. Ittunni Rama Nair*, 53 M. 540. It is submitted that the decision requires re-consideration, being directly opposed as it is to the decisions of other courts mentioned above on the identical point, and conflicting also as it does with Madras decisions by Division and Full Benches in similar appeals from suits for accounts. One of the reasons given in the decision for the conclusion that no court fee is payable is that since the amount of profits has not yet been ascertained, to require the appellant to pay court-fee on them is "difficult to justify on principle. But the principle exists equally in appeals from preliminary decrees in suits for accounts. A Full Bench of the Madras High Court has, however, decided that such an appeal from a preliminary decree



directing taking of accounts and ascertainment of amount due has to be stamped *ad valorem*. *Dhupati Srinivasacharlu v. Perindevamma*, 39 Mad. 725 (F. B.). The second argument advanced by the learned Judges is that if the defendant subsequently appeals against the final decree regarding the amount of mesne profits ascertained and awarded, that will be the apt occasion for requiring him to pay court-fee and that otherwise he will have to pay court-fee twice over. But there is no guarantee that he will in fact file an appeal against the final decree. If and when he does file such an appeal, it will be time enough to give credit to him then to the extent of the court-fee paid on the appeal from the preliminary decree. It sounds odd that he should claim and be given credit in advance for court-fee subsequently payable by him in an appeal which may not eventuate at all. In that case there will arise no "occasion" at all for the collection of court-fee on the claim for mesne profits. The problem has been solved in *Kanchan v. Kamala*, 16 Cal. L. J. 564, where a defendant having appealed against a decree for possession and antecedent mesne profits left unascertained (but estimated in the plaint at Rs. 4,199-8) and paid court-fee on the total value of the two claims as in the plaint and appealed again subsequently against the final decree as regards the profits (ascertained to be Rs. 2,570-1-10), it was held that as he had already paid court-fees on the claim for mesne profits he could not be called upon to pay court-fees a second time upon the memorandum of appeal from the decree for mesne profits. See also *Dhanukdari Prasad Pandey v. Ramadhikari Missir*, 12 Pat. 188, where it was held that allowance should be made for the court-fee already paid on the appeal from the preliminary decree and that court-fee need be paid in the subsequent appeal from the final decree only on the excess profits decreed. Similarly in *Kantichandra Tarafdar v. Radha Raman Sarkar*, 57 C. 463, where the appeal was by a defendant from a final decree in a suit for accounts it was held that he will get credit for the court-fee already paid in connection with the appeal from the preliminary decree. Even in Madras in *Suppuithayammal, In Re*, 55 Mad. 664, it was held by a Division Bench that where a defendant having appealed from a preliminary decree for accounts and paid court-fee in the appeal, appeals again to the same court from the final decree pending the previous appeal, he need pay court-fee only on the amount if any in excess of that on which court-fee was already paid. All things considered it is for consideration whether the decision in 52 M. L. J. 128 does not set out the correct view though the same has been considered to be *obiter* by the learned judges in 53 M. 540.

**Appeals from preliminary and final decrees in suits for accounts and in mortgage suits.**—See commentary under s. 7 cl. iv (A) and cl. ix.

**Appeals from both preliminary and final decrees.**—*In re Suppuithayammal and others*, 55 Mad. 664=62 M. L. J. 624, it was held that when the same party who has filed an appeal against

a preliminary decree for accounts and paid court-fees on the value as fixed by plaintiff in his plaint, files along with or pending that, an appeal to the same court against the final decree ascertaining the amount due according to the preliminary decree, he may get credit in the appeal attacking that amount for the court-fee already paid on the appeal against the preliminary decree. Their Lordships observed as follows:—"The decisions on the point are based on the principle that in a suit for accounts, the preliminary and final decrees are only stages of the same proceeding and though for the purpose of appealing two successive stages are now provided by Section 97 of the Civil Procedure Code, the suit or appeal is not fully decided till both stages are completed and therefore the plaintiff or appellant who has already paid the fee provided by the Court-Fees Act cannot be called upon to pay additional fees at the second stage. There are grounds for accepting this view within limits but we may at once point out that we must not be understood as approving its unlimited application.

"To the extent that when the same party, who has filed an appeal against a preliminary decree for accounts and paid court fees on the value as fixed by the plaintiff in the plaint, files along with or pending that appeal an appeal to the same court against the final decree ascertaining the amount due according to the preliminary decree he may get credit in the appeal attacking that amount for the court-fee already paid on the appeal against the preliminary decree, we are prepared to follow and act upon the Calcutta, Patna and Lahore decisions referred to.

*"But there are difficulties in extending the doctrine to cases where the appeal against the final decree is filed after the decision in the appeal on the preliminary decree. If a plaintiff's suit for accounts is dismissed on the ground that the defendant is not accountable and he appeals and gets a preliminary decree in his favour in appeal, and then in the first court a final decree is passed from which also he appeals disputing the amount decreed, there seems to be little justification for the argument, that he need not pay the fee on the amount disputed in appeal. Similarly in the case of a defendant who has appealed from a preliminary decree, if the appeal is dismissed, and then a final decree is passed from which also he appeals disputing the amount, there seems as little justification for saying that he need not pay the fee on the amount disputed in appeal. In both cases there is no ground for saying that the earlier appeal contemplated consideration of a final decree which had not and which might never come into existence. In those cases the fee in appeal would be governed by art. (1) of the first schedule." See also Kanchandara Tarafdar v. Radha Raman Sikdar, 57 Cal. 463 = 33 C. W. N. 743 = 1929 Cal. 815.*

The plaintiff valued the relief for recovery of land at Rs. 1,020 and of the mesne profits antecedent to the suit at Rs. 4-199-8-0. The primary court made a decree in favour of the plaintiff, which entitled the plaintiff to recover possession of the land and also to realise mesne

profits when subsequently ascertained. The defendants appealed to the High Court, valued the appeal at Rs. 5,219-8-0, and paid court-fee on the memorandum of appeal *ad valorem*. During the pendency of the appeal, proceedings for the assessment of the mesne profits were carried on in the court below, and mesne profits were assessed at Rs. 2,570-1-10. A decree for this sum was made in favour of the plaintiff. The defendants appealed against that decree for mesne profits. *Held*, that as the defendants had already paid court-fee upon the claim for mesne profits valued at Rs. 4,199-8-0 they could not be called upon to pay court-fees a second time upon the memorandum of appeal from the decree for mesne profits. *Kanchan Mandar v. Kamala Prasad Chowdhury*, 16 C. L. J. 564=15 I. C. 572. See also *Ram Mundar v. Maharani Nawalakhbati*, 2 Pat. 815=1924 Pat. 815; *Dhanukdari Prasad Pandey v. Ramadshikari Missir*, 12 Pat. 188. Where full court-fee has been paid on the memorandum of appeal from the preliminary decree in a suit for redemption, the memorandum of appeal from the final decree need be stamped with Rs. 2 only. *Buddu Ram v. Naimat Rai*, 4 Lah. 406=1923 Lah. 632. The party can also file a combined appeal against both the preliminary and final decrees provided there is no bar of limitation. *Balwant Sing Ram Chandra v. Sakharam Mancharam*, 18 Bom. L. R. 80=33 I. C. 137; See also *Damodar Padhano v. Haribandhu Patnaick*, 14 L. W. 389=70 I. C. 392. In *Nanibala Dasi v. Ichhamoyee Dasi*, 40 C. L. J. 291=1925 Cal. 218, a memorandum of appeal against preliminary decree in a mortgage suit was allowed to be amended so as to convert the appeal into a combined appeal both against preliminary and final decrees. In *Swami Dayal v. Muhammad Sher Khan*, 11 O. L. J. 148=1925 Oudh 39, the Oudh Court allowed refund of court-fee paid on the appeal from final decree filed when the appeal from the preliminary decree was pending. In *Kartick Chandra Roy v. Asha Ram Agurwalla*, 39 C. W. N. 315, however full *ad valorem* court-fee was held to be payable in an appeal from a personal decree under Or. 34, r. 6 during the pendency of an appeal from the preliminary decree in the suit.

#### **Preliminary decree and rights following thereunder.—**

The parties have on the making of the preliminary decree acquired rights or incurred liabilities which are fixed, unless or until the decree is varied or set aside in appeal. After a decree has once been made in a suit the suit cannot be dismissed. *Lachmi Narain v. Balmakund*, 20 L. W. 491 P. C.=4 Pat. 61. It is not even necessary for the plaintiff to file an application for mesne profits except in Madras. See O. 20, r. 12 (3). An order dismissing such an application as premature or on the ground that the preliminary decree has been appealed against is not a decree and is not appealable. See Appeal 425/1927 (Madras, unreported). If, however, any such application is dismissed on the ground that it is barred by limitation or on the merits, such a dismissal would operate as a dismissal of the suit which by the way is not proper *Bhatu Ram v. Fogal Ram*, 5 Pat. 223 and

the order would be a decree and appealable as such. *Shankar v. Gangaram*, 52 Bom. 360 = 1928 Bom. 236.

### Partnership Suits.

**Order 21, Rule 50, C. P. C.**—An order made under O. 21, r. 50 (3), determining the liability of any person as being a partner in a firm for a decree passed against the firm is a decree and an appeal against it requires *ad valorem* court-fee the matter being governed by Sch. I, Art. 1 and not by Sch. II, Art. 11. *Valliappa Chetty v. Rangaswamy Naicker*, 35 I. C. 429; *Bhuvnath Ja v. Barindra M. Bhattacharjee*, 60 Cal. 530 = 1933 Cal. 546 = 37 C. W. N. 227; *Jugal Kishore Gulab Singh v. Dina Nath Sri Ram*, 1930 Lah. 825; 35 P. L. R. 565 = 1934 Lah. 958.

### Mortgage Suits.

**Order absolute for sale. Order 34, Rule 5.**—(S. 89, Transfer of Property Act).

An order absolute for sale made on an application under O. 34, r. 5, C. P. C. is a decree and an appeal from it requires to be stamped *ad valorem*. *Bajirangi Lal v. Mahabir Kunwar*, 35 All. 476; *Jankibai Ramdayal v. Chinna Sadashiv*, 22 Bom. L. R. 822 = 51 I.C. 579; *Becher Singh v. Becharam Suhu*, 10 Cal L. J. 91. An order dismissing an application under O. 34, r. 5 as barred by limitation is a decree and an appeal from it requires *ad valorem* court-fees. *Charu Chandra Mitter v. Bhairath Prasad*, 12 C. W. N. 1028. An order dismissing an application for a final decree in a suit for a sale on a mortgage, is not an order under s. 47 C. P. C., but a decree in the suit and is appealable as a decree under s. 96, C. P. C. *Subbalakshmi Ammal v. Ramanujam Chetty*, Curgenven, J., 42 Mad. 52. An order refusing to pass a final decree under O. 34, r. 5 on the ground that the preliminary decree has been appealed against is not a decree and is not appealable. Appeal 425 of 1927 (Madras, unreported). A mortgagee asked for a final mortgage decree for sale of the mortgaged properties to recover the balance of the mortgage money whereupon the mortgagor filed an objection to that application on the alleged agreement to extend the time for payment of the balance of the money. The trial court held that it could not recognise the adjustment because no application to have it recorded had been made within the time limited by law, and gave the mortgagee a final decree for sale of the mortgaged properties. The mortgagor claimed to be entitled to appeal as if it were an order in execution. It was held that it was not an order in execution but was a judgment in the mortgage suit and if the mortgagor desired to appeal, he must appeal against the final decree for sale of the mortgaged property and must stamp his appeal *ad valorem*. *Ahmed Rahaman and others v. A. L. A. R. Chettyar Firm* 6 Rang. 285 = 1928 Rang. 194. An appeal against a final decree on the ground that the mortgagor should or should not have been allowed further time is not an exception to the general rule that an appeal against a final decree requires an *ad valorem* fee. There is no diffe-

rence in the principle applicable whatever the nature of the final decree may be and it is immaterial on what ground the decree is challenged. *Singai Raghobar v. Chhogmal*, 1931 Nag. 1. If an appellant wishes to appeal on the sole ground that extension of time ought to have been granted, his proper course is to appeal against the order refusing time and not against the decree, and if such appeal is successful, it will vacate the final decree, if one has been passed. *Per Jackson A. J. C. in Ibid.*

It was held in *Rangaraju v. Ethirajammal*, 57 M.L.J. 718, that an appeal against an order directing after contest that a final decree shall be passed in a mortgage suit is only an appeal against an order and not against a decree and does not require *ad valorem* court-fees. His Lordship distinguished an order "that a decree be drawn up" from the decree itself. "Although the effect of the order no doubt would be that final decree must be passed, it can hardly be said that this appeal is tantamount to an appeal from that decree. We have only to consider what the permissible grounds in each case would be. In this appeal against the order, the grounds must necessarily be limited to adducing cause why the final decree should not be passed; whereas once the decree is passed and an appeal is preferred against it, grounds such as those would not avail the appellant, but he must attack the merits of the decree. I think it is quite clear, therefore, that the scope of an appeal against that order would be different from that against the decree and further that a judgment-debtor has a right of appeal against both. To charge him *ad valorem* fees in this appeal would mean, if he appealed against the decree, he would have to pay them twice over, which I do not think can be correct".

On the other hand in *Ahmed Rahman v. A. L. A. R. Chettiar Firm*, 6 Rang. 285, cited above, it has been held that where an appeal is preferred against an order which is an order for a final decree for sale in a mortgage suit, such appeal must be against the final decree itself and not against the order as an order and consequently the appeal must be stamped *ad valorem*.

If the decision in 57 M. L. J. is correct, it would lead to the result that in every case where an order is made that a final decree be passed, the defendant would appeal only against the order and not against the decree prepared in accordance with that order as he can thereby avoid payment of higher court-fees. The order made is the judgment of the court in the matter and the final decree is prepared in accordance with it just as much as the decree in any suit is prepared in accordance with the judgment in it. Can a defendant appeal from the judgment alone in a suit by saying that he is not appealing against the decree, that his appeal is limited to adducing cause why the decree should not be passed, and that he is not attacking in the appeal the merits of the decree? The statement that the judgment-debtor has a right of appeal against both the order and the final decree is incorrect. Such an order being distinct from a decree according to His Lordship,

it must, if at all, be appealable only as an order. But it is not one of the appealable orders mentioned in O. 43. The result contemplated by His Lordship that if the judgment-debtor appealed against both he would have to pay court-fee twice over is therefore it is submitted not correct. The decision has since been dissented from by a Division Bench in *Ramachandra Rao v. Rathayya*, 66 M. L. J. 178 = 39 L. W. 185.

### Personal decree.

**Order 34, r. 6, C. P. C.**—(s. 90, Transfer of Property Act).

An order allowing an application for a personal decree under O. 34, r. 6 is a decree in the suit and not a proceeding in execution. *Ruma Venkatasubba Iyer v. Shanmukham*, (1913) M.W.N. 867. An appeal from such an order requires *ad valorem* court-fees. *Lakhi Narain Jagdeh v. Choudhury Kirtibas Das*, 18 C. L. J. 133; *Syed Wasi Ali v. Jang Bahadur Singh*, 30 I. C. 497; 14 A. L. J. 328 = 35 I. C. 158; *Kartick Chandra Roy v. Asha Ram Agarwalla*, 39 C.W.N. 315. The fact that an appeal by the mortgagor against the preliminary decree for sale on which he has paid *ad valorem* court-fee is pending makes no difference. *Kartick Chandra Roy v. Asha Ram Agarwalla*, 39 C. W. N. 315.

An order dismissing an application under O. XXXIV, r. 6 as barred by limitation is a decree in the suit and is not an order in execution and an appeal from it must be stamped with *ad valorem* court-fee. *Muhammad Iltifat Hussain v. Alimunnissa Bibi*, 40 All. 553.

**Appeal disputing personal liability.**—Where the appellant in an appeal against a mortgage decree ordering the sale of the mortgaged property and enabling the plaintiff to apply for a personal decree for any balance left after the sale, does not dispute the liability of the property but disputes only his personal liability, the value of the subject-matter of the appeal is not the whole mortgage amount but the excess of the mortgage amount over the net sale proceeds for which alone he is by the decree likely to be made liable. *Venkatarama Sasirigal v. Sabapathy Thevar*, 57 Mad. 632 = 66 M. L. J. 348 = 39 L. W. 648 = 1934 Mad. 230. But unless the appeal is filed after the sale is held,—and this is not possible in all cases, as sale may not be held within the period of limitation for filing the appeal,—it is not possible to ascertain this excess. There would then be an insurmountable difficulty in valuing the appeal which may have to be treated as incapable of valuation. But as the new form of decree prescribed by the Code (See Nos. 5 and 5-A of App. D) leaves the question of personal liability open till after the sale is held and the deficiency ascertained, courts need not give any finding as to personal liability at that stage of the proceeding. It would be time enough to pass a personal decree for the balance under O. 34, r. 6 after the sale is held and a balance is still left. See also under Sch. II, Art. 17 (vi) for decisions holding that an appeal solely about personal liability is incapable of valuation.

**Appeal by prior mortgagees for a decree in Form No. 10 providing for redemption of their mortgage and for personal relief.**—In a suit by a puisne mortgagee for enforcement of his mortgage, making the prior mortgagee a party defendant, the court passed a decree in Form No. 9 of Appendix D of Sch. I, C. P. Code and refused to provide for redemption of the prior mortgage in favour of the defendant and his prayer for personal relief. The prior mortgagee appealed praying for a personal decree in his favour and for a decree in Form No. 10. It was held that the court-fee payable on the appeal was under Sch. II, Art. 17 (vi) and not under Sch. I, Art. 1. *Akhil Bandhu Guha, In re*, 61 Cal. 320 = 38 C. W. N. 248 = 1934 Cal. 377.

**Exemption for plaints under the Estates Land Act—Appeals.**—Though the Government have by Notification No. 358, clause 35 remitted the fees chargeable in respect of plaints in suits instituted before the Collector under ss. 55, 56, 95, 112, 144 and 160 of the Madras Estates Land Act 1908, the remission does not extend to appeals from the decrees in those suits and court-fees are therefore payable on such memoranda of appeals, *Vaithyalinga Aiyaswami Aiyar v. District Board of Tanjore*, 57 M. L. J. 510 (514).

**Appeals from remand orders amounting really to decrees**—In *Raghunath Das v. Jhari Singh*, 3 Pat. L. J. 99, where the plaintiff's suit for possession and further mesne profits was dismissed by the first court but the appellate court holding that the plaintiff was entitled to possession sent the case back to the first court for ascertainment of mesne profits *pendente lite*, and the defendants preferred an appeal, under the provisions of order 43 rule 1 (w) C. P. C., against the order of the appellate court, paying a two-rupee court-fee stamp it was held that the appeal was in fact an appeal from an appellate decree and that *ad valorem* fee was payable in the appeal. See also *Subba Goundan v. Krishnamari*, 45 Mad. 449.

**Future interest.**—In an appeal by the plaintiff from a decree wholly dismissing his suit for money, the value of the appeal need not include the interest accruing subsequent to the date of suit. The case is different in an appeal by the defendant from a decree awarding future interest, as the value of the appeal in such a case should include future interest also. *Srinivasa Row v. Ramaswami Chetti*, 10 M.L.J. 144 : *Venkathirisami v. Kasthuriranga*, 64 M. L. J. 496 (498) = 56 Mad. 886 ; *Kali Parsad Singh v. Mathura Singh*, 1923 Pat. 28 ; *Sadhu Saran Rai v. Barhamdeo Lall*, 1927 Pat. 230. But where a plaintiff in whose favour a decree for money has been passed allowing interest up to date of plaint or other subsequent date appeals claiming, among other grounds or solely, that further interest should have been granted the claim for the future interest is a subject-matter of the appeal within the meaning of Art. 1 of Sch. I of the Act and therefore court-fee is payable for it under that Art. But in *Vithal Hari v. Govind Vasudeo*, (1892) 17 Bom. 41, where the plaintiff decree-holder in a mortgage suit appealed, claiming, among other

grounds, interest from date of suit to date fixed for payment, which had been denied to him by the decree of the lower court, it was held by the Bombay High Court that the claim for future interest was not chargeable with court-fees, as no fee was chargeable under s. 7 cl. 1 of the Act for future interest or profits claimed in a suit. It should be noted that this Bombay case was before the amendment of the Court-Fees Act in 1908. Before the amendment it was thought in some quarters that the Article was not a substantive provision but only an auxiliary provision for merely calculating the amount of fees chargeable under the substantive provisions in s. 7. The amendment approves the view that the Article is a substantive provision by itself, applicable to appeals, to which s. 7 does not apply. S. 7 applies only to suits. See note *supra* at pp. 412-414 under the heading, "Is Article 1 a substantive provision?" This Bombay ruling, it is submitted, is not good law now. In *Bhavani Prasad v. Kutub-unissa Bibi*, (1905) 27 All. 559, where the plaintiff in a mortgage suit appealed claiming interest from date fixed for payment until realization, the Allahabad High Court held that the claim was incapable of valuation and that court-fee was payable under Sch. II Art. 17. In a recent case *Damodar Prasad v. Hardeo Prasad*, 52 All. 1029= 1931 All. 351, where the plaintiff who had sued for money and was given decree for a portion of the claim, with future interest from the date of the decree, but without *pendente lite* interest from date of suit to date of decree, appeal for the rest of the suit amount and also for *pendente lite* interest, it was held that the claim for *pendente lite* interest was a part of the subject-matter in dispute in appeal within the meaning of Sch. I Art. 1 of the Act and that *ad valorem* court-fee was payable thereon. His Lordship observes at p. 1030, "Under Article 1, Schedule I, the memorandum of appeal must be stamped *ad valorem* on 'the amount or value of the subject-matter in dispute'. When the appellant has expressly claimed a definitely ascertainable sum by way of *pendente lite* interest, which was disallowed by the trial court, I think that sum must be held to be a part of 'the amount or value of the subject-matter in dispute'. Otherwise, if the appeal had related to *pendente lite* interest only, we should be forced to hold that there was no 'subject matter in dispute' in the appellate court, and such a conclusion seems absurd". These Allahabad decisions were referred to with approval by the Lahore High Court in *Bhagh Shah v. Labha Mal*, 1933 Lah. 941, where the plaintiff preferred an appeal claiming (1) portion of the suit amount and (2) interest from date of suit to date of realisation both of which had been disallowed by the lower court but he paid no court-fee for claim No. (2). It was held that as no *ad valorem* fee on the amount calculated up to date of appeal or at least a fixed fee of Rs. 10 under Sch. II Art. 17 (6) was paid according to either of the Allahabad decisions, the deficiency whatever it is could not be allowed to be made good at that late stage of the case, and the court dismissed the appeal with regard to the claim for interest. As the court was inclined to dismiss the claim for



interest the court-fee due for it whatever it may be, not having been paid in time, it was not necessary for it to decide which of the two Allahabad decisions referred to was applicable in the case. It would appear that the combined effect of the two decisions is that court-fee *ad valorem* is payable for *pendente lite* interest, as it is an ascertainable amount, both ends of the period for which it is to be calculated being known and that a fixed fee under Art. 17 should be paid for the subsequent period. In a recent case, *Bhagwanti v. Atma Singh*, 154 I. C. 470, the Lahore High Court has held that where a decree in a suit on a promissory note awards interest at the contract rate up to the date of suit but is silent as to the claim for interest from the date of suit till realisation, an appeal from such decree on the ground that interest should have been allowed upto the date of realisation of the amount, is incapable of valuation. In Madras, however, it would appear that where interest from date of suit till realisation is specially claimed by plaintiff-appellant, *ad valorem* fee is payable on the total amount made up of *pendente lite* interest and subsequent interest calculated till date of appeal, judging from the analogy of the decision in appeal No. 90 of 1897 noted below under the heading "Madras".

As observed in 10 M. L. J. 144 and 1927 Pat. 230 quoted above, an appeal by defendants stands on a different footing from one by the plaintiff. But there is a difference of opinion between the several courts as to the period for which interest should be calculated for payment of court-fee *ad valorem*.

**Madras.**—In Appeal No. 90 of 1897 (unreported) it was held that court-fee was payable on the interest calculated up to the date of presentation of appeal.

**Allahabad and Patna.**—In all cases in which the amount declared by the Court to be due at the date of the decree can be ascertained by a reference to the judgment and decree, it is that amount at which the appeal or cross-objection should be valued and future interest need not be taken into account, *Raghubir Prasad v. Shankar, Baksh Singh*, 36 All. 40 F. B.; *Mithoo Lal v. Mt. Chameli*, 1934 A.L.J. 957 = 150 I.C. 653 = 1934 All. 805; *Rawlins v. Lakshminarain Jha*, 3 Pat. L. J. 443 = 44 I. C. 50.

**Oudh.**—The view is the same as that in Madras. *Gobardhan Das v. Narendra Bahadur Singh*, 22 O. C. 1 = 50 I. C. 798.

**Sindh.**—The court-fee payable by an unsuccessful defendant on a memorandum of appeal challenging the validity of the whole of the preliminary decree passed against him under O. 34, C. P. C. is *ad valorem* on the subject-matter in dispute, *viz.*, not merely on the amount claimed in the suit but the amount awarded by the decree inclusive of interest up to the date fixed for redemption, but exclusive of costs. *Valiram v. Karachi Bank*, 1927 Sind 250.

**Future mesne profits.**—The principle of the decision in Appeal 90 of 1897 quoted above was extended in S. R. No. 2505 of 1916

(unreported) to a case of future mesne profits in Madras by Wallis, C. J., who held that the value of an appeal by defendant from a decree for possession with future profits at a certain rate includes the future profits calculated at that rate from the date of plaint till date of Appeal. See also observations in *Punya Nahako v. King Emperor*, 50 Mad. 488 (493) that a defendant appellant who seeks to be relieved from the payment of mesne profits must pay court-fee on such mesne profits up to date of his appeal memorandum. When the mesne profits have been ascertained the court-fee is payable on the ascertained rate. In *Maiden v. Janakiramayya*, 21 Mad. 371 it was held that no stamp duty was payable by the defendant-appellant in respect of mesne profits subsequent to institution of suit. This decision however was based on *Ramakrishna Bhikaji v. Bhimabai*, 16 Bom. 416, where it was held that before executing a decree granting future mesne profits, the decree-holder was not bound to pay any court-fee, as s. 11 of the Court-Fees Act applied only to a claim for past mesne profits and not to future mesne profits. It is submitted that whether or not s. 11 applies to future profits ascertained and sought to be recovered in execution proceedings, it applies only to proceedings in execution, and cannot apply to a memorandum of appeal, which has to be charged to court-fees according to its subject-matter under Sch. I, Art. 1 of the Act. See commentary under the heading "O. 20, r. 12 C. P. C.," *supra*. Further these decisions were given before the amendment of Sch. I, Art. 1 in 1908, at a time when it was thought that the said Art. 1 was not a substantive, but only a mere auxiliary provision. *Vide* notes under the heading "Future Interest" *supra*. And in Madras s. 11 has been made applicable to future mesne profits by the amending Act of 1922. It is submitted therefore that the decision in 21 Mad. 371 is no longer good law.

As regards cases where there has been no ascertainment of mesne profits, see note *supra* under the heading "Appeal against preliminary decree directing ascertainment of mesne profits."

**Costs.**—When apart from and independently of any other reliefs which an appellant seeks in an appeal from a decree, he seeks relief on the ground that the costs of the proceedings have not been properly assessed or apportioned by the decree, he makes the costs the subject-matter of dispute, and must pay stamp duty thereon. *Reference under the Court-Fees Act*, 19 Mad. 350=4 M. L. J. 148; see also *Fateh Sing v. Manj Rai*, 35 P. L. R. 656=1934 Lah. 739. When an appeal against costs is distinct and separate from the other parts of the appeal, court-fee must be paid *ad valorem* on the costs decreed. *Rawlins v. Lachminarain*, 3 Pat. L. J. 443=44 I. C. 50. But in *Jyoti Prasad Singha v. Jogendra Ram*, 56 Cal. 188=32 C. W. N. 1105, it was held by the Calcutta High Court that in an appeal regarding costs in a partition suit a fixed court-fee is payable as in the suit. For further comment on this case, see note under Sch. II Art. 17 under the heading "Plaint or memorandum of appeal in a suit". In *Kamal Kamesi Debi v. Rangpore North Bengal Bank*, 25

C. W. N. 934 = 1921 Cal. 55, it was held that a memorandum of cross-objections regarding costs only need be stamped only as a petition under Sch. II, Art. 1 of the Court-Fees Act. This decision has been dissented from in *Ma Shin v. Maung Shwe Hnit*, 2 Rang. 637 = 1925 Rang. 145, *Nihal Chand v. Amar Nath*, 1926 Lah. 645 = 98 I. C. 272, and *Kumar Kamakhya Narain Singh v. Ramraj Singh*, 8 Pat. 543 = 1928 Pat. 286, in all of which it has been held that court-fees should be paid *ad valorem* under Art. 1 of Sch. I on the amount of costs in dispute, and the decision in *Durga Das Chowdhury v. Ram Nath Chowdhury*, 8 M. I. A. 262 relied on in 25 C. W. N. 934 that costs should not be taken into account in the valuation of an appeal for the purpose of determining the value of the subject matter in suit or in appeal for a Privy Council Appeal under s. 110, C. P. C. was distinguished on the ground that it applied only for the limited purpose of an appeal under s. 110, C. P. C. and did not in any way indicate that costs of a suit could not be considered to be the "Subject-matter in dispute" under Sch. I, Art. 1 of the Court Fees Act. See also the recent decision in *Chiranji Lal v. Bool Chand*, 52 All. 1020 = 1930 All. 832, where the plaintiff's cross-objection in an appeal by defendant in a redemption suit related, among other grounds, to the order of the lower court disallowing costs and it was held, after a review of all the above authorities, that the amount of costs claimed formed part of the subject-matter in dispute on which *ad valorem* court-fee was payable under Sch. I, Art. 1. But in an ordinary appeal by defendant claiming reversal of the preliminary decree passed against him in a mortgage suit, the subject-matter does not include the costs decreed though it includes subsequent interest. *Valiram v. Karachi Bauk*, 1927 Sand. 250. See also *Beni Parshad v. Raja Ram*, 37 P. L. R. 50.

**Cross-objection.**—The words "or of cross-objection" were inserted in this Article by the Civil Procedure Code of 1908, s. 155 of which repealed s. 16 of the Court-Fees Act which formerly provided for the levy of court-fees on cross-objections. Under that section court-fees were payable on the cross-objections only at the time of hearing and not at the time of filing. Another difference was that the court-fee payable was not on the subject-matter but was the difference between the court-fee paid on the memorandum of appeal and that payable on it if it included the subject matter of the cross-objections. Now all this is changed and court-fee is payable at the time of filing and on the subject-matter in dispute. Some difficulty has arisen on the question of the calculation of court-fees payable on a memorandum of cross-objections, on account of the words relating to it being inserted only in Art. I of Sch. I, which prescribes *ad valorem* fee and not in Art. 17 of Sch. II. The question arises what is the court-fee payable on a memorandum of cross-objections in an appeal from a suit under Sch. II, Art. 17, which prescribes a fixed fee. The Allahabad High Court held in a case that court-fee was chargeable *ad valorem* under Art. 1, Sch. I even on cross-objections in suits where a

fixed fee was payable under Sch. II, Art. 17. *Lakhan Singh v. Ramkishan Das*, 40 All. 93. That was a case where the plaintiff sued for certain declarations. The suit was partly decreed and partly dismissed. The plaintiff appealed against the portion of the decree disallowing his claim and paid a fixed court-fee under Art. 17. The defendant filed a memorandum of cross-objections. It was held that *ad valorem* court-fee was payable even though the appellant paid only a fixed court-fee. The learned Judge observes "The only place in the Court-Fees Act in which cross-objections are mentioned is Art. 1 Sch. I of the Act. Under that Article the cross objection must bear an *ad valorem* fee according to the value of the subject-matter in dispute. Art. 17, Sch. II though it relates to a plaint or memorandum of appeal in the classes of suits mentioned therein does not relate to cross-objections filed in similar suits. This Act was amended when Act V of 1908 was passed and the words 'or cross-objection' were added to Art. 1 of Sch. I but not to Art. 17 of Sch. II. Under the former Article, the cross objection must pay an *ad valorem* fee according to the value or amount of the subject-matter in dispute. In the present case, the respondent has valued the relief which he seeks in his cross-objection at Rs. 1,000. He must therefore pay this large fee when the appellant in the case can appeal on payment of only Rs. 10. It appears to me that this is perhaps due to an oversight at the time when Act V of 1908 was passed in not adding the words 'or cross-objection' to Art. 17 of Sch. II." This decision was followed by the Patna High Court in *Daroga Rani v. Paramakuer*, 3 Pat. L.J. 917-45 I. C. 568, where the learned Judge thought that the words were deliberately omitted from Art. 17 so as to make cross-objections in appeals in suits under Sch. II, Art. 17 liable to *ad valorem* court-fee and observed "An unsuccessful litigant genuinely desirous of one of the reliefs contemplated by Art. 17 is at liberty to file an appeal forthwith irrespective of any action that may be taken by his adversary, and pay on the appeal a court-fee of Rs. 10. If he asks for such a relief only because his adversary has preferred an appeal, he will be required if his own appeal is time barred to pay an *ad valorem* court-fee. If the appeal is not time barred he should seek his remedy by a regular appeal, not by a cross-objection." See also *Harnam Singh v. Bahu Rani*, 1933 Oudh 528 and *Abdul Subhan Khan v. Musarat Ali Khan*, 155 I. C. 293=1935 O. W. N. 505, in which the Lucknow High Court takes the same view. But in a recent case the Allahabad High Court has held that a cross-objection in a declaratory suit where no other relief is asked for, does not require *ad valorem* court-fees. The judge observes: "In my opinion the Act lays down the principles for court-fees and the schedules merely apply those principles in detail. The principles of the Act to be deducted from s. 7, is that *ad valorem* court-fees are not to be charged in a declaratory suit where consequential relief is not prayed for. On that view the omission of the words "cross-objection" in Schedule II, Art. 17 (iii) is a mere clerical error and it is no doubt intended that by a memorandum of

appeal a cross objection should also be included. \* \* A cross-objection and an appeal are very intimately connected and there is no essential difference from the point of view of court-fee between one and the other and there is no reason whatever why a person who files a cross-objection should have to pay *ad valorem* court-fee whereas if he filed an appeal instead of a cross objection he will not have to pay *ad valorem* court-fee." *Surenbra Singh v. Gambhir Singh*, 1934 A. L. J. 743 = 1934 All. 728.

In a previous case, it has also been held by the Allahabad High Court that in the cases of a cross-objection claiming possession of immoveable property the court-fee is payable *ad valorem* on the market value of the property and not on the statutory value calculated at so many times the land revenue in accordance with s. 7, cl. (v), as is the case with regard to memoranda of appeals which are merely continuations of suits being always regarded as such, and have always been valued in accordance with s. 7 while cross objections came to be valued according to their subject-matter for the first time only in 1908, *Bishen Sahai v. Chhotey Lal*, 47 All. 89 = 1925 All. 119. But see 1934 A. L. J. 743, cited *supra*.

It should be noted that cross objections are not mentioned in Sch. II, Art. 11 which provides for court-fees payable in appeals against orders and it has therefore been held in *Sri Rajee Lochan v. Mahant Ram*, 1923 Oudh 44 = 70 I. C. 286, that in cross-objections in appeals against orders court-fee is payable *ad valorem* on the value of the subject-matter. "The words 'or of cross-objection' were inserted in Art. 1 of Sch. I by Act V of 1908 but it appears that from an oversight similar words were not at the same time inserted in Art. 11 or 17 of Sch. II." Where the subject-matter is not capable of valuation, the plaintiff's valuation if not unreasonable should be accepted.

In Calcutta and Bombay it would appear that cross-objections are stamped in the same manner as memoranda of appeal. *Secretary of State for India v. Digambar Nando*, 27 C. L. J. 443; *Sayyed Amir Saheb v. Sheikh Masleudin*, 40 Bom. 541.

The difficulty has been solved in Madras by the Amendment Act of 1922, s. 2 of which enacts that, unless there is anything repugnant in the subject or context "Memorandum of appeal" shall include a memorandum of cross-objection. In Bengal also the matter has been placed beyond doubt by Bengal Act VII of 1935 which enacts a similar provision in S. 2 of the Act. The result is that cross-objections filed in appeals under Sch. II, Art. 11 or 17 of the Court-Fees Act stand in the same position as memoranda of appeals for purposes of court fees.

Though s. 12 of the Court-Fees Act does not provide for levy in the High Court of the deficit fee payable on cross-objections in the lower appellate court, the High Court has inherent power to levy it, *Rasik Behari Prasad Choudhry v. Hirde Narain*

*Choudhry*, 1 Pat. 471. The problem however does not arise in Madras, as memorandum of cross-objections has been made equivalent to memorandum of appeal by the Amendment Act of 1922.

For cross-objections regarding costs. See commentary under the heading "Costs".

**Objection to findings.**—Order 41, rule 22, C. P. C. provides that "any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the court below, but take any cross-objection to the decree which he could have taken by way of appeal". Objections filed by a respondent criticizing the findings of the lower court but supporting the decree are not therefore cross-objections and are not liable to *ad valorem* stamp duty under Sch. I, Art. 1. Where the suit was dismissed and a decree passed entirely in favour of the defendant and the plaintiff appealed against the decree and the respondent then filed an objection to the finding of the lower court against him in the judgment, it was held that the objection was no more than a petition and was not liable to stamp duty as a cross-objection. *Bhajan Lal v. Chahat Rai*, 15 A. L. J. 325=39 I. C. 279; *Ram Prasad Kalwer v. Ajanasia*, 44 All. 577; *V. Sahdeo Narain Deo v. Kasum Kumari*, 1 Pat. 258.

**Set off.**—The words "written statement pleading a set off or counter-claim" were inserted in this Article by s. 155 of the Civil Procedure Code of 1908. Written statements not pleading set off or counter-claim were not before that and are not now liable to payment of court-fees, s. 19, clause (iii). As regards written statements pleading a set-off or counter-claim there was a conflict of decisions before 1908 as regards their liability to court-fees. The Madras, Allahabad and Bombay High Courts held that since s. 111 of the Civil Procedure Code of 1882 provided that a set-off shall have the same effect as a plaint in a cross-suit, it should be stamped as a plaint. *Chennappa v. Raghunadha*, (1891) 15 Mad. 29; *Amir Zama v. Nathu Mal*, (1886) 8 All. 396; *Bai Shri Majirajbai v. Narotam Hargovan*, (1889) 13 Bom. 672. In *Fakir Chandra Dutta v. Gisborn and Co.*, (1903) 8 C. W. N. 174, Justice Bannerjee of the Calcutta High Court differed from the above decision and held that under s. 111, a set-off had the same effect as a plaint only for the purpose of enabling the court to pronounce final judgment in the same suit both on the original and the cross-claim and not for the purpose of court-fees and that therefore a written statement pleading set-off required no court-fee. In *Guisse v. Anantaram Rathi*, (1905) 10 C. W. N. 199, a Division Bench of the same court differed from the opinion expressed by Justice Bannerjee as an *obiter dictum* and held that court-fees must be paid for such written statements. But in *Abdul Aziz v. Razak Ali*, (1913) 17 C. L. J. (F. B.), the judge who made the reference to the Full Bench thought that the written statement in that case which was filed before the passing of the Civil Procedure Code of 1908

did not require any court-fee even though it pleaded a set off, and agreed with the opinion expressed by Bannerjee, J., in 8 C. W. N. 174. The Full Bench did not express any opinion on the point as it was unnecessary in that case.

The legislature has set at rest this conflict of decisions by inserting a provision about written statements pleading set-off in Art. 1 thereby approving of the Madras, Allahabad and Bombay decisions.

The words "set-off" and "counter claim" are not defined in the Act but they have a definite meaning attached to them. They refer to a cross claim against the plaintiff which entitles the defendant to refuse to pay the amount demanded by the plaintiff and to assert that the result of setting off the cross claim of the defendant would be that the defendant would on the contrary be entitled to a decree for the balance. *Wali Mahomed Shaloo v. Khoja Ismaillia Trading Co. Ltd.*, 1933 Sind 247.

**Legal set-off.**—A legal set-off is invalid unless stamped. *Kesar Singh v. Tirath Singh*, 13 Lah. L. T. 45.

**Equitable set-off.**—Under the old Civil Procedure Code, it was held that s. 111 provided only for legal set-off and was not exhaustive and that therefore no court-fee was payable on written statements pleading an equitable set-off. *Subrahmaniam Chettiar v. Muthuswami Aiyangar*, (1907) 17 M. L. J. 481. But now, the expression "set-off" used in Art. 1 includes an equitable set-off also and is not confined to legal set-off coming under O. 8, r. 6 C. P. Code and court-fee is chargeable on written statements claiming such set-off. *Sitaram Ayyar v. Ramanuja Mudaliar*, 142 I. C. 719=1933 Mad. 203. In this case the suit was on a promissory note and the defendant claimed in his written statement a specified amount by way of damages, setting out the particulars of the claim made by him as one arising from the same transaction of sale which led to the execution of the promissory note in favour of the plaintiff and by reason of the breach of covenant alleged to have been committed by the plaintiff. It was held that the claim came under Art. 1 of Sch. I. *Ibid.* See also *Lakshmanan Chettiar v. Ramanathan Chettiar*, 58 Mad. 338=68 M. L. J. 23=41 L. W. 27=1935 Mad. 115.

**Written statements setting off a larger amount than plaint claim.**—A question arises whether in written statements pleading set off of a larger amount than that claimed in the plaint, court-fee is payable on the whole amount sought to be set-off or only on the excess over the plaint amount. In *Chakkan Lal v. Kanhaiya Lal*, 45 All. 218=1923 All. 118 and *Jugal Kishore Narain Singh v. Bankey Behari Lal*, 16 Pat. L.T. 76=1935 Pat. 110, it was held that regard being had to Art. 1 of Sch. I of the Court-Fees Act, court-fee was payable on the full amount sought to be set off in the written statement and not merely on the excess. In 15 Mad. 29 referred to above, where the amount sought to be set-off was less than the

amount sued for and there was therefore no excess it was held that court-fee was payable. On the other hand the Nagpur Court has held that court fee is payable only on the amount claimed in the written statement in excess of that claimed by the plaintiff and only if the defendant wants a decree for that excess. *Ramangir v. Achharani*, 1927 Nag. 74. It would appear from the report of the case that it was an equitable set-off that was claimed there, and so the decision that the court-fee is payable only for the excess applies perhaps only where equitable set-off is claimed. In *Fetei Mahamad Haji Suleman v. Ramzan Khan*, (1914) 27 I. C. 316, and *Jessaram Dhamuram v. Isardass*, (1914) 27 I. C. 320, the Sind Court held that no court-fee was payable for equitable set off until after the amount has been ascertained, and that even if a definite amount is claimed as equitable set-off no court-fee was payable until after the amount was ascertained by the court as the defendant was not bound to state any definite amount in such a case in his written statement. In *Tayaballi Gulam Hussain v. Atmaram Sakhrani*, (1914) 38 Bom. 631, it was held the equity arising from a cross debt could be set up by the defendant without payment of court-fee.

Where the written statement pleads a set off within the meaning of Art. 1 of Sch. I of the Court-Fees Act and it does not bear proper court-fee the court is debarred by the Court-Fees Act from acting on it and going into the question of set-off, *Muthu Erulappa Pillay v. Venku Thatkayya Maistry*, (1916) 36 I. C. 957. See also *Mahammad Raza v. Kubra Bibi*, 15 I. C. 526. But in *Jugal Kishore Narain Singh v. Bankey Behari Lal*, 16 Pat. L. T. 76=1935 Pat. 110, it has been held that the court is not precluded from considering the question of set off even if the written statement does not bear the requisite Court fee at the time it is filed, and that under s. 149, C. P. Code the court has a discretion, even where no part of the court-fee has been paid, to allow the party by whom the court-fee is payable to pay it at any stage.

A plea of payment is different from one of set off. The deduction which under s. 108 (f) of the Transfer of Property Act, the lessee is authorized to make for the expenses of repairs from the rent as it becomes due, is in the nature of a payment to the landlord and does not bear the character of a set-off, *Katie Graham v. Colonial Government of British Guiana*, (1910) 12 C. L. J. 351.

**Counter-claim.**—The word counter-claim is not defined in the Court-Fees Act and is nowhere used in the Code of Civil Procedure. In Webster's Dictionary and in Wharton's Law Lexicon a counter-claim is defined as exactly the same thing as set-off. But Ameer Ali and Woodroffe give the word a meaning which seems more properly to belong to the English word "Cross-claim", which of course is a very wide term. A counter-claim is a form of suit unknown to the Code of Civil Procedure, but there is nothing to prevent a judge treating the counter-claim as the plaint in a cross-suit and hearing the two



together if the counter-claim is properly stamped. See *Saya Kya v. Maung Kyaw Shum*, 2 Rang. 276-1924 Rang. 346, where the counter-claim was for specific performance of execution of a sale deed.

**Defendant's claim in an account suit.**—In a suit for an account it is open to the defendant to say that on the accounts being gone into, money would be due to him and that a decree should be passed in his favour for such amount as may be found due to him. There is nothing in the Act to suggest that he should pay court-fee on the written statement making such claim. He is not making any cross-claim. He admits that he is an accounting party and offers to render the account and at the same time pleads that the result of the account would be in his favour and not in favour of the plaintiff. If it was the intention of the legislature that if in a suit of this nature the defendant claims a decree in his favour, he should not only plead in his written statement that as a result of an account being taken, a sum of money would be found due to him, but that he should claim a decree for specific sum as due to him and pay court-fee thereon the legislature should have said so. But as it is, there is no obligation on a defendant to claim any specific sum as due to him in his written statement or to pay court-fee thereon, on pain of being debarred from obtaining a decree in his favour in the same suit. There is equally no warrant in holding that where a defendant nominally values his relief in his written statement on which he pays court-fee and offers to pay additional court-fee on such sum as may be found due to him on a settlement of accounts, he must be deemed to have relinquished his claim for the balance. *Wali Mahomed Shaloo v. Khoja Ismaillia Trading Co. Ltd.*, 1933 Sind 247. Where the defendant is not putting forward any counter-claim, but is making various claims as to items in the partition account to be taken in the suit, he cannot be asked to pay court-fees on those sums. *Balgis Beevi Ammal v. Hathija Beevi Ammal*, 1933 Mad. 353.

Where in a suit for accounts, the defendants challenge certain items and claim credit for certain other items omitted to be given credit to in the plaintiff's account, the plea is neither a set-off nor a counter-claim. *The Firm of Krishnam Subbayya v. The Firm of Marwadi Kumaji Sogmull*, C.R.P. No. 902 of 1934 (Mad.) decided on 30-10-1934.

**Proviso.**—The proviso applies only to *ad valorem* fees and not to the fixed fees mentioned in Sch. II. The maximum fee in suits and appeals where *ad valorem* fee is leviable is Rs. 3,000. That is, the fee on Rs. 4,10,000 and above, is always Rs. 3,000. See the last figure in the Table of Rates. In 3 All. 108 at page 111, Straight, J., observes thus "Legislative authorities might naturally enough have intended to fix some limitation to the tax on institution of litigation; they certainly could not have had in view the establishment of an impost of so elastic and indefinite a kind, that the machinery of the courts

could only be set in motion to recover large claims by persons of very great wealth."

The rule laid down in s. 17 regarding multifarious suits is subject to this proviso and the maximum fee leviable on the plaint or memo of appeal in such a suit is Rs. 3,000. Oldfield, J., said in *Raghobir Singh v. Dharam Kuar*, 3 All. 108: "It is true that by the terms of Art. I, Sch. I, that Article will not apply to a plaint or memorandum of appeal 'otherwise provided for in the Act', but those words mean a provision fixing the amount of fees chargeable, and a plaint or memorandum of appeal will not come under the operation of Art. 1, Sch. I, for which a proper fee has been provided in some other part of the Act. Now s. 17 of the Act makes no provision of this kind for the proper fee to be charged; it merely lays down a general rule that, where a suit embraces two or more distinct subjects, the plaint shall be charged with the aggregate amount of fees to which the plaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under the Act. Section 17 does not pretend to fix the amount of the fee, but, on the other hand, expressly refers to other parts of the Act for the amount, that is, to the schedules, which alone deal with the amount; and the general rule in s. 17 becomes necessarily governed by rules as to the amount of the fee to be found in the schedules, and among them by the proviso in Art. 1, Sch. I, limiting the amount of fee on a plaint or memorandum of appeal of the nature of those referred to in s. 17; for no other part of the Act deals with the amount, and, if the Article is to be applied, it must be applied in its integrity, and with the proviso which it contains fixing a maximum fee leviable, a proviso which is in no way inconsistent with the application of the general rule contained in s. 17, but which governs its application". This decision was approved and followed in *Kashi Prasad Singh v. Secretary of State of India*, 29 Cal. 140.

Although the proviso to Art. 1, Sch. I refers only to the maximum fee leviable on a plaint or memorandum of appeal and leaves out any reference to written statement pleading a set off or counter claim there is no authority for charging a larger sum on a written statement than what is specified as maximum in the Schedule. *Md. Mumtaz Ali v. Md. Sadaab Ali*, 5 Luck 621 = 1930 Oudh 140. Pullan, J., added: "I give my opinion in respect of the maximum fee only, but offer no opinion as to whether in the case of, for instance, a declaratory suit filed on a Rs. 10 stamp a claim for set-off should or should not be charged *ad valorem*."

The maximum fee has been raised to Rs. 10,000 in Calcutta and Bombay, to Rs. 5,000 in Central Provinces and to Rs. 4,500 in United Provinces. The proviso has been omitted altogether in Madras, Bihar and Orissa, and the Punjab by the Amending Acts.

## Article 2

Number.		Proper fee.
Plaint *** in a suit for possession under [the Specific Relief Act, 1877, section 9].	...	{ A fee of one-half the amount prescribed in the foregoing scale.

## COMMENTARY.

**Amendments.**

1. The words "or memorandum of appeal" were repealed by the Court-Fees Amendment Act, 1870 (XX of 1870).

2. The words "Specific Relief Act, 1877, s. 9" were substituted for the words and figures "Act No XIV of 1859" (to provide for the limitation of suits) by the Repealing and Amending Act, 1891 (XII of 1891).

By reason of the splitting of Article 1 into two Articles in Madras by Madras Court-Fees Amending Act, this Article is numbered 3 in the said Act.

**Scope.**—This Article relates to what are known as possessory suits. The Article as it stood originally ran thus, "Plaint or memorandum of appeal in a suit for possession under Act XVI of 1859, s. 15."

**Specific Relief Act, s. 9.**—It runs as follows "If any person is dispossessed without his consent of immoveable property otherwise than in due course of law, he or any person claiming through him may by suit recover possession thereof notwithstanding any other title that may be set up in such suit." The object of s. 9 is to discourage people from taking the law into their own hands whatever may be their title to same. 21 Bom. L. R. 768. Possessory title is good against everybody except the true owner and in the case of wrongful ouster, the plaintiff is entitled to succeed on the strength of his previous possession. But the scope of the enquiry in a suit under s. 9 of the Specific Relief Act is quite restricted. The defendant will not be allowed to plead or prove title in himself. 29 I. C. 210. The court has no jurisdiction to go into the question of the relative title of the contending parties to the suit property but must decide on the question of the plaintiff's alleged possession and dispossession. 48 I. C. 433. The suit must be brought within 6 months of the date of dispossession—Article 3 of the Limitation Act. No such suit can be brought against Government and no appeal or review lies from any such decree or order—*vide* s. 9. Section 9 of the Specific Relief Act affords only a speedy remedy to a plaintiff who is unauthorisedly dispossessed by the defendant, *Turiny v. Ganga*, 14 C. 649 and this Article provides for a lower court-fee for such action which is a moiety of the usual fee payable under Article 1.

**Madras.**—By the Madras Court-Fees Amendment Act, a new Article has been added as Article 2 between Articles 1 and 2 in the main Act so that Article 2 in the main Act is numbered as Art. 3 in the Madras Act. Madras Article 2 runs as follows:—

Plaint or written statement, pleading a set off or counter-claim presented to a court outside the Presidency town in any suit of the nature cognizable by Court of Small Causes when the amount or value of the subject-matter does not exceed Rs. 500.	When the amount or value of the subject-matter in dispute does not exceed 5 rupees.	Six annas.
	When such amount or value exceeds 5 rupees, for every 5 rupees or part thereof in excess of 5 rupees up to 100 rupees.	Six annas.
	When such amount or value exceeds one hundred rupees for every ten rupees or part thereof in excess of one hundred rupees up to five hundred rupees.	Twelve annas.

**Scope of the Article.**—It is intended to show some concession to small cause suits in the matter of court-fees. It may be noticed that the words used in the first column of the Article are "suits of the nature cognizable by Court of Small Causes". This has reference only to the subject-matter of the suit as distinguished from the amount of the claim (23 M. 547 F. B.) As to what are suits which are not cognizable by Courts of Small Causes, see the Provincial Small Cause Courts Act (IX of 1887) II schedule and s. 19 of the Presidency Small Cause Courts Act XV of 1882.

**Court-fee in suit comprising distinct subjects, some of which are of a small cause nature.**—If two sums of Rs. 600 and Rs. 400 respectively are claimed in a suit on two promissory notes, the court-fee is payable on the two sums separately, the court-fee on the second item being calculated at the lower sale prescribed by Art. 2 of Sch. I. *Secretary of State for India v. Ayyaswami Chettiar*, 65 M. L. J. 252 = 141 I. C. 533 = 1933 Mad. 178. Of course no other view is logical in the face of the clear provisions of s. 17 of the Act. Where A sues B on claims  $x$ ,  $y$  and  $z$ , and has to pay *ad valorem* court-fee computed on each of the claims separately, instead on the aggregate value of  $x+y+z$ , this principle should of necessity be applied in cases when such separate valuation secures to the party the benefit of a concessional rate. It is true that by clubbing together such different 'subjects' where it is allowed, the plaintiff converts what each of them really is *viz.*, a small cause suit into an original suit with all the rigour that flows therefrom *viz.* a more formal trial and a right of appeal.

and a second appeal. Could this fact be taken as disentitling a plaintiff from paying court-fee on each of his claims at lower rate allowable to small cause claims? The answer is clearly in the negative. See also page 336 *supra*.

**Small Cause Court.**—See s. 32 of the Provincial Small Cause Courts Act which provides that the provisions of the Act relating to the nature of suits cognizable by Courts of Small Causes applies to all courts invested by or under any enactment for the time being in force with the jurisdiction of a Court of Small Causes.

**"Nature cognizable by Courts of Small Causes."**—These words indicate that the lower scale is applicable to suits of a small cause nature irrespective of the fact whether the suit is as a matter of fact filed or tried as a small cause suit. In the Madras Presidency, there are in the mofussil, Small Causes Courts, District Munsiff's Courts invested with small cause jurisdiction, and Subordinate Judges' Courts similarly invested. And in the case of District Munsiffs, their small cause jurisdiction varies as regards their seniority and the particular courts they preside over. Again it varies according to whether the Sub Judge has territorial jurisdiction over a particular Munsiff. The result is that the question of the trial of a suit of a small cause nature as a small cause suit or as an original suit is in many cases a matter of accident. The question therefore arises whether such suits of a small cause nature should get the benefit of a lower court-fee irrespective of the fact they are actually tried as small cause or as original suits. Regarding the trial of such suits, there is a difference between a small cause and an original suit. As there is no appeal provided against a decree in a small cause suit, the provisions of the Civil Procedure Code regarding the examination of witnesses, O. XVIII, do not apply to it. Similarly, it is provided in O. XX r. 4 (1) of the Civil Procedure Code that the judgments of a court of small causes need not contain more than the points for determination and the decision thereon. Where the trial is not so simple, the question arises whether in suits which though they relate to claims of a small cause nature are tried as original suits the lesser court-fee is to be levied. As Madras Article 2 stands at present, it is clear that it is only the nature of the claim that determines the fee irrespective of the fact whether it is tried as an original or small cause suit. Section 102 of the Civil Procedure Code provides that no second appeal shall lie in any suit of the nature cognizable by courts of small causes, when the amount or value of the subject-matter of the original suit does not exceed Rs. 500. Here also, it may be noticed that it is the nature of the claim that determines the question of second appeal.

By a recent amendment of the Madras Civil Courts Act, the Small Cause jurisdiction of Munsiffs has been raised from Rs. 200 to Rs. 300 and of Subordinate Judges from Rs. 500 to Rs. 1,000. It gave rise to an anomaly as suits of a small cause nature between Rs. 500 and 1,000 were not covered by Article 2. But the Government have since rectified it by the issue of the following G. O. under s. 35 of

the Act —G. O. No. 3895 dated 6-12-1927 and Government of Madras Notification dated 11-1-1928.

“To reduce the fee now chargeable under Article 1 of Schedule I of the Madras Court-Fees (Amendment) Act, 1922 (V of 1922), in respect of a plaint or written statement pleading a set off or counter-claim, presented to a Court outside the Presidency Town in any suit filed as a small cause suit, when the amount or value of the subject-matter exceeds Rs. 500 but does not exceed Rs. 1,000, to twelve annas for every ten rupees or part thereof of such amount or value; provided that the full fee shall become payable, if for any reason, the suit cannot be tried as a small cause suit.”

The Government were further of opinion that Article 2 gave relief perhaps to cases not intended to be relieved against where the suits though of a Small Cause nature were in fact tried as original suits and declared in the above said G. O. as follows :—

“The Government consider that the fee leviable under Article 1 instead of that leviable under Article 2 of Schedule I to the Court-Fees Act, 1870, as amended by the Madras Court-Fees Amendment Act, 1922, should be levied in respect of a plaint or written statement pleading a set off or counter claim, presented to a court outside the Presidency Town in all suits of the nature cognizable by Courts of Small Causes if the suits are filed as ordinary suits or, having been filed as small cause suits cannot be tried as such. Steps will be separately taken to amend Schedule I to the Court-Fees Act to give effect to this decision.” But it may be noted that no steps have been taken till now to achieve that object.

**Appeals.**—Article 2 (Madras Amendment) mentions only plaints, written statements pleading a set off or counter-claim presented to a Court in any suit cognizable by Courts of Small Causes. Contrast with this the wording of Article I which while referring to a plaint, or written statement also mentions memorandum of appeal. The omission of the words “memorandum of appeal” in Article 2 (Madras) makes the Article inapplicable to memorandum of appeals. Does the legislature think that the lower court-fee should be paid in suits of the nature cognizable by Courts of Small Causes only in the trial court and not in the appellate court? Does the nature of the suit change in appeal? There is not, it is submitted, any logical consistency in providing a lower court-fee for such suits where a plaint or written statement is concerned and make it inapplicable for memoranda of appeals. Perhaps the possibility of an appeal in such cases was not adverted to. The fact that the words used in the Article, viz. “suits of a nature cognizable by Small Causes Courts” need not necessarily mean that such suits should be small cause suits has evidently been overlooked. Else there is no justification while permitting the levy of a lighter court-fee on a plaint in a suit of a small cause nature even though tried as an original suit, to deny the same where an appeal is preferred against the decree.

**Court-fees leviable on suits of small cause nature. They may be tabulated as follows:—**

	Value of Suit.	How tried.	Court-fee.
(i)	Does not exceed Rs. 500 in value.	Tried as a small cause suit.	Court-Fee under Article 2.
(ii)	do	Tried as an original suit.	Court-Fee under Article 2.
(iii)	Exceeds Rs 500 but below Rs. 1,000.	Tried as a small cause suit.	Reduced court-fee See R. 39.
(iv)	do	Tried as an original suit	Court-fee under Article 1.

**Appeals.**—The fee is leviable only as per decree in original suits under Article 1.

**Summary.**—Thus a suit or a claim of the nature cognizable by a Court of Small Causes may be below Rs. 500 or between Rs. 500 and 1,000 or above it. If it is above Rs. 1,000 in value, it will have always to be filed and tried as an original suit. If below Rs. 1,000, the suit may, considering the local court where it is filed be filed either as a small cause, or as an original suit. If such suits are filed either as small causes or original suits, if the value does not exceed Rs. 500 it is the lower court-fee that has to be levied. If it exceeds that amount then the lower court-fee can be collected only if it is actually tried as a small cause suit. Again whatever may be its value, if it is tried as a small cause suit, there is no appeal against the decree in it. But if it is tried as an original suit then there is always a first appeal. Regarding second appeal there is again a difference. If the amount does not exceed Rs. 500, *i. e.* if a suit is of a small cause nature but tried as an original suit, there is no second appeal *vide* s. 102 of the Civil Procedure Code. But if it exceeds that value there is a second appeal.

Now that the small cause jurisdiction of Subordinate Judges' courts has been enlarged up to Rs. 1,000, it is a matter for consideration whether when as a matter of accident such suits though of a small cause nature have to be tried as original suits, a second appeal should be provided for. If not, s. 102 may have to be amended.

**Article 3.** [Repealed by Act VIII of 1871.]

**Article 4.**

Application for review of judgment, if presented on or after the ninth day from the date of the decree.	...	...	{ The fee leviable on the planis or memorandum of appeal.
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## Article 5.

Application for review of judgment, if presented before the nineteenth day from the date of the decree.	} ...	... { One-half of the fee leviable on the plaint or memorandum of appeal.
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### COMMENTARY.

See also commentaries under s. 14 *supra*,

These two Articles apply to the fee leviable in cases of applications for review of judgment.

**Review.**—It is provided by s. 114 of the Civil Procedure Code that any person considering himself aggrieved,

(a) by a decree or order from which an appeal is allowed by the Code but from which no appeal has been preferred

(b) by decree or order from which no appeal is allowed by the Code or

(c) by a decision on a reference from a Court of Small Causes may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order as it thinks fit.

For detailed rules as to when such an application for review lies, see O. 47 of the Civil Procedure Code.

**Limitation.**—*Vide* Articles 161 and 162 and 173 of the Limitation Act. The period for an application for review of judgment by a Provincial Small Causes Court is 15 days from the date of the decree and in the case of the High Court in the exercise of its original jurisdiction it is 20 days. In the case of the other courts it is 90 days.

### Computation of time.

#### (a) General.

In the first place, it should be noted that the computation for the purposes of limitation is quite a different thing from the computation of the time fixed for the purpose of court-fees. The Limitation Act is not *in pari materia* with the Court-Fees Act. See *In re Kota*, 9 M. 134. See also commentaries under s. 14 *supra*.

#### (b) For limitation.

(1) The applicant is entitled under s. 12 of the Limitation Act to deduct the time spent in obtaining copy of the decree. *Fazal v. Umar*, 88 L. C. 1929=1925 Lah. 377.

(2) If the last day for filing the application falls on a Sunday or a holiday, s. 4 of the Limitation Act enables the filing of the petition on the next working day.



(c) *For court-fee.*

(1) Time taken for obtaining copies is not to be excluded. *Jugat v. Jogeswar*, 2 O. C. 302.

(2) Sundays and holidays are not to be excluded from the period of 90 days. *Sayera Bibi v. Bhutnath*, 15 I. C. 455 = 15 C. L. J. 505.

(3) The date is to be computed from the date of the signing of the decree, *Kalipadu v. Sekhar*, 35 I. C. 348 = 24 C. L. J. 235.

(4) Date of presentation to the Stamp Reporter is the proper date for computation. It is sufficient presentation under the Article. *Nowrang v. Janardhan*, 1924 Cal. 994; *Kalipad v. Sekhar*, 35 I. C. 348.

(5) If the court was closed on the 89th day, the petitioner cannot invoke the aid of s. 5 of the Limitation Act and claim the benefit and pay half the fees. *In re Kota*, 9 M. 134; *Sayera Bibi v. Bhutnath*, 15 C. L. J. 505.

But in *Nowrang v. Janardhan*, 1924 Cal. 994 = 80 I. C. 294, the Calcutta High Court took a bold view which is at any rate a common sense point of view though not in exact conformity with the strict letter of the statute. In that case a review petition was presented on the 90th day as the 89th day was a Sunday. According to Article 4, the full court-fee has to be levied. But under s. 14 of the Court-Fees Act, where a review is presented on or after the 90th day the court may in its discretion grant him a certificate refunding half the fees, that is in effect condoning the delay in the filing of the petition after the 89th day. The power given to the court under s. 14 is larger than the power given by s. 5 of the Limitation Act. The Calcutta High Court therefore held in the decision above quoted that where a petition is filed on the 90th day, when the 89th day was a holiday, it is an idle formality to insist on the payment of the full Court-fee under Art. 4 and then acting under s. 14 of the Act issue a refund certificate for half the fee. But in the matter of office routine, there might be some difficulties in following the principle laid down in the decision. Where the 89th day is a holiday, the office automatically admits the review petition if it is otherwise in order and presented on the next working day. But if a half fee alone is to be collected thereon, on the principle of the Calcutta High Court ruling, the decision of court that the delay in filing the review petition after the 89th day was not due to any laches on the part of the petitioner has first to be given under s. 14. For that, the matter must be posted before court and a ruling got before the review petition is admitted. Naturally the opposite side should also be given an opportunity to show cause against it and the point will have to be settled before the review petition itself is taken on file.

### Application.

(i) The Articles do not apply to interlocutory orders. *Jagannath v. Mulchand*, 31 A. 261. They must come under Article 1, Schedule II. The Articles speak only about decrees.

(ii) The provisions of the Code as to review apply even to *ex parte* orders. *Rash Behari v. Hemanta*, 88 I. C. 921=41 C. L. J. 349; and to proceedings under the Indian Succession Act in granting letters of administration, *Kyone Home v. Kyon Some*, 3 Rang. 261=91 I. C. 509=1925 Rang. 314.

(iii) Applications invoking the inherent powers of courts under s. 151 of the Civil Procedure Code are not classed as Review applications, *Probas Kumar Ganguli v. Nithar Lal Ganguli*, 1924 Cal. 1054. See also *Pearry Chowdhury v. Sanoo Das*, 27 I. C. 628=19 C. W. N. 419 where the court has set aside a compromise decree as vitiated by a fraud on court.

**Applicability of the Articles to cases under Sch. II.**—Schedule I of the Act is headed "*ad valorem* Fees" and Articles 4 and 5 occurring in the said Schedule have been held applicable only to cases where an *ad valorem* fee is leviable on the plaint or memorandum of appeal and not to cases where a fixed fee is leviable under Schedule II. *De Souza v. Secretary of State*, (1892) Bom. Prin. Judgments 1353. But a contrary view is taken by the Calcutta High Court. *Altap Ali v. Jamsur Ali*, 30 C. W. N. 334=1926 Cal. 638=93 I. C. 909. There the question arose out of an application for review of a decision dismissing a second appeal under O. 41, r. 11 of the Civil Procedure Code. The suit out of which the appeal arose was one for partition and the plaint and the memorandum of appeal bore a court-fee stamp of Rs. 15 as required by Article 17 (vi) of Schedule II of the Court-Fees Act as amended by the Bengal Act of 1922. It was contended that s. 4 of the Act directed the payment of fees as indicated by the 1st or 2nd Schedule of the Act and as the fee payable in the plaint in that case was under the second schedule which related to "fixed fees" the first schedule which referred to "*ad valorem* fees" could not be looked into for the purpose of levying fees on an application as in the present case. It was also contended that the headings of the two schedules form parts of the enactment and they refer to two distinct classes of documents and in order to find what fee should be payable on this application one must be confined to the second schedule and that being so, the only provision applicable to this document is Article 1 (d) (ii) of the second schedule which requires a fee of Rs. 2. Regarding these contentions, their Lordships observed thus "In order to determine what amount of fee is payable in respect of the document one must find whether any of its kind is specified in either the first or the second schedule of the Act. Such a document is clearly specified in Article 4, Schedule I of the Act. *Prima facie* then the court-fee payable is under that Article. There is no doubt that schedules annexed to an Act and the heading under which they are placed are parts of the enactment. But the same general rule which regulates the effect of the preamble applies also to these headings—namely that they are not to be taken into consideration, if the language of the enactment is clear." *Craig on Statute Law—Third Edition*, page 188. The

learned Government Pleader also relies on the observation of the Privy Council in the case of *Abdul Rahim v. Municipal Commissioner for the City of Bombay*, 42 Bom. 642 at page 672=23 C. W. N. 110 P. C., that the heading to a group of sections cannot be pressed into a constructive limitation upon the exercise of the powers given by the express words of the Act. In this case, however, this rule of interpretation need hardly be referred to. I am unable to appreciate the argument that in finding out what fee is payable on the document in question, you must not look into the first schedule but must confine your attention to the second schedule. Why should this be so? The Act nowhere says (apart from the provisions of Article 4 of Schedule I) that in finding what fee is payable on an application, you must find out how the fee was payable with respect to the plaint. The argument of the petitioner in substance comes to this: you find in the third column against Article 4, Schedule I that reference is made to the fee leviable on the plaint. You should then find out under which schedule of the Act the fee is leviable on the plaint and you must then find out whether this application is specifically provided for in that schedule. As in this case, such a document is not specified in that schedule, it must come under a general provision of "application or petition" under Article 1 of Schedule II. I am unable to accept this argument. It seems to me that would not be a natural construction of the Act. In my opinion on a proper construction of s. 4 of the Act, this document directly falls within Article 4 of Schedule I and the fee leviable is according to the provision in the third column, irrespective of the provision relating to the levying of the fee on the plaint. The fee payable in respect of the application in question is therefore Rs. 15".

**Effect of amendment of Court-fees Act between the date of decree and application for review.**—In a decision of the Madras High Court reported in 50 M. 488=52 M. L. J. 128=100 I. C. 72=1927 Mad. 360, *In re Punya Nahako*, Wallace, J., has fully discussed the point in all its aspects, and the facts of the case and the law bearing thereon are set out in the following extract.

"This is an application for review of a judgment passed before the increase in the court fees under the amended Court-fees Act of 1922 come into force. The review application was put in after that amended Act had been passed. The first question is whether the rate of fee to be levied is under the old Act or under the amended Act. Under Schedule I, Articles 4 and 5, the court-fee for application for review of judgment is either the whole or half of "the fee leviable on the plaint or the memorandum of appeal" and the decision turns on the interpretation of that phrase.

It may be construed in at least four different ways—

1. As the fee actually levied on the plaint or memorandum of appeal when admitted,

2. As the proper fee to be levied on the plaint or memorandum of appeal at the time of presentation thereof,

3. As the fee which would have been properly levied on the plaint or memorandum of appeal if they had been put in at the time of the presentation of the application for review, and

4. As the proper fee to be levied if the applicant for review were then putting in a plaint or memorandum of appeal for the same relief.

As to (1), it seems clear that it is not the proper construction of the phrase. In the case of a suit or appeal in *forma pauperis*, no fee is actually levied on admission. Again the court of appeal may in certain circumstances increase or decrease the fee actually paid and it is clearly more reasonable to suppose that the legislature meant the fee which was the proper fee to be levied and not the fee actually levied.

As to (2), an adherence to the construction would mean that even though the review application only relates to a small portion of the relief asked for in the plaint or memorandum of appeal the applicant for review would have to pay the full stamp paid in the plaint or memorandum of appeal. This again seems to me hardly acceptable. This view, however, has found favour in the Calcutta High Court. *Nandilal Agrani v. Jogendra Chandra Dutta*, (1923) 28 C.W.N. 403, which refuses to follow an earlier decision of this Court, 7 Madras High Court Reports, Appendix I, to which I shall allude later on. Such a construction would in this court at least make an application for review much more expensive than an appeal.

As to (3), it would imply that where an applicant for review is the defendant and the appeals have been by the plaintiff all through, and the review application is thus the first motion of his for any relief, his application would have to be valued not on any sums paid by himself for the relief sought for by him but on the stamp paid by the opposite party for the relief sought for by it which may obviously have no sort of relation to the relief which the review application wants. This again hardly seems a reasonable construction of the phrase.

Construction No. (4) implies the applicant pays not for the relief sought for by any one else over which he has no control but on the relief sought by himself and he thus pays naturally and equitably on that relief as if it was a plaint or memorandum of appeal by himself for the relief. This appears to be the most reasonable interpretation of the phrase and it is the interpretation put upon the phrase by the court so long ago as 1872 (see 7 Madras High Court Reports, Rulings, Appendix, page 1) and this interpretation has been practically followed ever since by this court. The Bombay High Court has taken a similar view in *In re Manohar G. Tambekar*, 4 Bom. 26. It follows therefore that the court-fee will be the court-fee payable as if on the date when the review application was put in, the applicant was filing a plaint or memorandum of appeal for the same relief, i.e., in the present case the court-fee leviable will be the court-fee which has to be levied under the amended Court-Fees

Act calculated as if the application for review were a plaint or memorandum of appeal, for the relief sought for."

*Court-fee on Mesne Profits.*—"The next point is whether court-fee must be paid on the mesne profits up to the date of the review application. Now it is plain that in this matter, the review application has to be considered as if it were a memorandum of appeal and on such a memorandum of appeal, there is no doubt that the applicant who seeks to be relieved from the payment of such mesne profits must pay court-fee on such mesne profits up to date of his appeal memorandum; see *Brahmayya v. Lakshminarasimham*, 16 M. 310, and *Balarama Naidu v. Sangan Naidu*, 44 M. 280. When mesne profits have been ascertained the court-fee is payable on the ascertained rate. Where the mesne profits have not been ascertained, the fee is chargeable on the valuation of the mesne profits in the plaint. The petitioner therefore must pay on the mesne profits which in this case are payable on the ascertained rate calculated up to the date of the application. The last point is at what rate, the old rate or the new rate, must the fee on these mesne profits be levied. The answer to point (i) answers to this point, also. It must be paid as if the applicant was now putting in a memorandum of appeal and he must therefore pay according to the new scale." *Ibid*.

**Bombay.**—The Bombay High Court takes the same view as Madras, see *In re Manohar Tambekar*, 4 Bom. 26. But the other High Courts take a contrary view.

**Calcutta.**—Before the Bengal Court-Fees Amendment Act IV of 1922 was passed, an appeal was filed and disposed of. After the act was passed, a review petition was filed with one half of the court-fee paid on the memorandum of appeal and not half the fee that would have to be paid as per the amended Act. It was held that the payment of half the fee leviable under the old Act was sufficient. *Nandhi-lal Agrani v. Dutt*, 39 C. L. J. 222 = 1924 Cal. 881 = 82 I. C. 297.

**Allahabad.**—See *In the matter of Agbal Ahmed*, 31 All. 294. The use of the word "leviable" in column 3 of Article 5 as contrasted with the word "levied" was explained as providing for the case of a review application by a defendant or respondent in an appeal where the plaintiff or appellant did not pay any court-fee but was permitted to sue or appeal in *forma pauperis*. In those exceptional cases, no fee having been in fact levied, the person applying for review of the judgment is to pay half the fee that would have been levied. Thus the use of the word "leviable" that according to the Madras view was relied on, to show that the current rate of fee when the review application is filed is to be charged, was explained away. See also *Parameswar Kurmi v. Bakhtawar Pande*, 54 All. 1092 = 1932 A. L. J. 908 = 1933 All. 20, where it was held that the fee on an application for review must be calculated on the basis of the fee leviable on the memorandum of appeal according to the law in force when the memorandum of appeal was filed.

**Oudh.**—See *Nagehar Sahai v. Shian Bahadur*, 1924 Oudh 108.

**Patna.**—See *Shriekh Abdul Ganni v. Sito Singh*, 1925 Pat. 368 = 66 I. C. 143.

**Review of part.**—Where an application is made for the review only of a portion of a claim or decree, the question arises as to what is the proper fee. Should the applicant pay the whole or a moiety as the case may be of the fee paid on the plaint or memorandum of appeal or would it suffice if he treats the part of the claim sought to be reviewed as a separate entity and pay the whole or a moiety of the court-fee payable on that portion if that constituted a separate claim by itself. On the point, there is a divergence of views among the several High Courts. The Madras, Bombay and Rangoon High Courts take a liberal view and hold that it is sufficient if the fee is computed on the fractional claim sought to be reviewed while the other courts, *viz.*, Allahabad, Calcutta, Oudh, Punjab and Nagpur hold *contra*.

**Madras.**—The earliest case is that reported in 7 M. H. C. R. (1872) Appendix page 1, where it was held that it was sufficient to calculate the fee referable to that portion of the claim covered by the decree sought to be reviewed. This was followed in *Punya Nahako v. King Emperor*, 50 M. 488 = 52 M. L. J. 128 = 25 L. W. 203 = 1927 Mad. 360 where Odgers, J., observed that there was no valid reason why the decision in 7 M. H. C. R., which has stood since 1872 should be dissented from. His Lordship further observed that the interpretation put upon Arts. 4 and 5 in Calcutta in *Nandilal Agrani v. Jogendra Chandra Dutta*, 28 C. W. N. 403, worked an obvious injustice and preferred the view of the Bombay High Court in *In re Manohar Tambekar*, 4 B. 26, Wallace, J., has exhaustively dealt with all the aspects of the question in his judgment quoted above *in extenso* in another connection regarding the effect of the amendment of the Act between the date of the decree and the application for review. His Lordship's judgment contains also observations regarding the question as to the fee payable where the review relates to a part of a decree. It is observed in page 492 of the report that the court-fee leviable will be the court-fee payable as if on the date when the review application was put in, the applicant was filing a plaint or memorandum of appeal for the same relief.

**Bombay.**—The view of the Bombay High Court is the same as that of the Madras High Court. See *In re Manohar Tambekar*, 4 B. 26, where it was held that when a plaint or memorandum of appeal comprises a number of claims and a portion of such claims has been allowed by the judgment the party seeking a review should be required to stamp his application with a fee sufficient to cover the amount of the claims in regard to which he wishes the court to review its judgment. It was observed that in case of doubt a fiscal regulation should be construed in favour of the subject and that the construction put by the Bombay High Court on Art. 5

was not inconsistent with its actual words but was in harmony with the intention of s. 17.

**Rangoon.**—According to the Rangoon High Court also, it is sufficient if fees are paid on the actual relief sought for in the application for review and the entire fee paid on the plaint or memorandum of appeal is not necessary. Thus where the applicant seeks review only so far as it affects the question of the costs awarded to him, court-fee is payable only on the relief asked for. *A. A. R. Chettyar Firm v. Daw Htoo*, 11 Rang. 120=146 I. C. 560=1933 Rang. 203.

**Allahabad.**—The view of the Allahabad High Court is different. See *In the matter of Sheikh Maqubul Ahmad*, 31 A. 294. There it was held that the proper fee leviable on an application for review of judgment when it refers only to a portion of the decree is the fee leviable on the plaint or memorandum of appeal in which the judgment, review of which is asked for is passed. The Madras and Bomby decisions quoted above were disapproved. In the course of the judgment, Aikman, J., observed as follows :—

“The Act draws no distinction between application for review of judgment when the application affects the whole of the decree or only a portion thereof. No doubt the leading principle of the Act is that the amount of the court-fee bears relation to the amount of relief sought, but in the words I have to construe, I can find nothing to make this principle applicable”. Regarding the decision in 7 M. H. C. R. His Lordship observed that according to the construction put by it in Article 5, it should have to be read as if it ran “The fee leviable on a plaint or memorandum of appeal asking for the same relief as that asked for in the application for review”. According to the learned Judge to do so would be to go beyond the province of a court in interpreting the words of the Act. Regarding the decision in 4 Bom. 26, the learned Judge while observing that the decision is in favour of the applicant, admits that he arrived at it not without hesitation. The view of the Calcutta High Court was followed. It was further observed : “It is possible that the construction which I place on the section may in some instances be productive of hardship but in my opinion the words of the Act admit of no interpretation other than what I place on them. If there is any hardship the remedy is an amendment of the law”. Regarding the use of the word “leviable” instead of “levied” in the Article, the learned Judge expresses the view that the word “leviable” was used in order to provide for an application for review by a defendant or respondent in the case of a suit or appeal in *forma pauperis*.

**Calcutta.**—In *Nanda Lal Agrani v. Jogendra Dutta*, 1924 Cal. 881=39 C. L. J. 222 at page 227, it is observed as follows : “It is immaterial whether the applicant seeks a review of the judgment in respect of the whole or a fraction of the subject-matter of the controversy. The proper fee for the application is the fee leviable on the

plaint or memorandum of appeal, whether the review affects the whole or a part of the decree. See *Nabin Chandra v. Mohamad Uzir*, 3 C. W. N. 292; *Imdad Husan v. Badri Prasad*, (1898) A.W.N. 212; *In re Mughul Ahmad*, 31 A. 224; *Hussaina v. Sahib*, 1913 P. L. R. 254. But the decisions in 7 M.H.C.R. Appendix 1 and *In re Monahar Tanbhekar*, 4 B. 26 point to the opposite conclusion. The policy of the legislature is obvious. The substance of the matter is that for the purpose of ascertainment of the court-fee payable on the application for review the application relates back to the plaint or memorandum of appeal, as the case may be; the amount to be levied is a fixed proportion independent of the scope of the application for review. To put the matter differently, as soon as a suit has been instituted the amount or court fee payable on a possible application for review of the prospective judgment in the suit becomes fixed".

Court-fee is leviable on the plaint which was actually filed and has resulted in the judgment sought to be reviewed even though the application related to only a small portion of the relief asked for in the plaint. *Satya Kripal Benerji v. Satyabikash Banerji*, 57 C. 679=1930 Cal. 631.

In *Nobin Chandra Chakrabarthy v. Muhamad Uzir Ali Sircar*, 3 C. W. N. 292, the review was only in respect of costs and it was held that the court-fee that was payable for the whole claim ought to be paid.

**Oudh.**—In *Nageshar Sahai v. Shian Bahadur and others*, 1924 Oudh 108, the question of the fee payable in applications where they are for reviewing part of the decree was considered. "It was argued on behalf of the applicant that had it been intended that one half of the full fee paid on the memorandum of appeal should be payable on such an application for review the word used would have been "levied" and not "leviable" and it was argued that the words "plaint" or "memorandum of appeal" should be construed as if they meant plaint or memorandum of appeal asking for the same relief as that asked for in the application for review. This question has been before all the High Courts in India, and while the courts in Bombay and Madras, incline to the view put forward by the applicant, the Allahabad, Calcutta and Lahore Courts have taken a contrary view and have held that the words "plaint or memorandum of appeal" mean the plaint or memorandum of appeal in which the judgment the review of which is asked for was passed (4 Bom. 26, 7 M. H. C. R. App. 1; 31 A. 294 and 3 C. W. N. 291) \* \* \* Had the legislature intended that an *ad valorem* fee should be levied only on the value of the subject-matter in respect of which relief is sought for by the application for review, we think it would have said so in clear and definite terms. The change in the law (from a fixed to an *ad valorem* fee) was no doubt made to prevent frivolous applications for review and though in some cases, the court-fee leviable may be disproportionate to the relief asked for, yet if the application



is successful the applicant can recover the greater portion of the fee paid by a certificate granted to him under s. 15 of the Act. As has been pointed out by Aikman, J., in 31 A. 294, the word "leviable" seems to have been used instead of the word "levied" in order to provide for an application for review by a defendant or respondent in the case of a suit or appeal, in *forma pauperis* and the use of the word would not justify us in fixing an interpretation to the Article which the plain words of the Article cannot bear."

**Punjab**—See *Musst. Hussainia v. Musst. Sahib Nar*, 20 I. C. 3 which takes a view similar to Allahabad and Calcutta High Courts.

**Nagpur**.—See the decision in *Ibrahim Ali v. Ahsan Hussain*, 142 I. C. 416=1933 Nag. 207, which takes a similar view after considering all the previous decisions of other courts.

**Review of Orders**.—Articles 4 and 5 dealing with cases of review of judgments refer to computation of the period from the date of the decree. Consequently the Articles are not intended to apply to cases where the judgments do not end in decrees as for instance where there is an order calling for a finding, etc. See *De Souza v. Secretary of State for India*, (1892) Bom. Printed Judgments, 383. In *Jaganath Prasad v. Mulchand*, 31 A. 262, it was held that an application for review of the interlocutory order was properly stamped with a court-fee stamp of Rs. 2 and that neither Article 4 nor Article 5 of Schedule I of the Court-Fees Act refers to an interlocutory order. The language of Article indicates that they deal with judgments ending in a decree.

**Inherent Powers**.—An application under S. 151, C. P. C. is not in the nature of review petitions. *Probas Kumar Ganguli v. Nithar Lal*, 1924 Cal. 1054.

**Review in Forma Pauperis**.—Where the plaintiff or appellant has already been declared a pauper and he files the review application it has been held that such an application is only a "proceeding connected with the suit" within O. 33, r. 8, C.P.C., and could be filed in *forma pauperis* without any court-fee. *Nobichandra v. Mohmad*, 3 C.W.N. 292; *Umda Bibi v. Naima Bibi*, 20 A. 410. But the difficulty arises where it is the defendant or respondent that files the application. Obviously there was no occasion for his being declared a pauper or otherwise in the suit or appeal. Such a question arose in an unreported case of the High Court of Madras, Civil Miscellaneous Petitions 4041 and 4045 of 1926 in A. S. 25/24. Curgenven, J., observed as follows:—

"Under O. 33, r. 8, a pauper plaintiff is not liable to pay any court-fee in respect of any petition for appointment of a pleader or other proceeding connected with the suit. The words which I have underlined have been construed in *Umda Bibi v. Naima Bibi*, 20 All. 410, to include an application for review of the decree. O. 44, r. 1, C. P. C. which enables a pauper to file an appeal, provides that the appeal shall proceed subject in all matters to the provisions relating

to suits by paupers, in so far as those provisions are applicable. This, I think, attracts the provisions of that portion of O. 33, r. 8 which I have referred to and on the authority of the case quoted would enable a pauper appellant to file a review application against an appellate decree. *There is however in this case the peculiarity that the appellant was not a pauper and only seeks now to be declared qualified as such.* It has been held in a number of cases, *Thomson v. Calcutta Tramway Co.*, 20 Cal. 319, which is in turn based on *Rivji Patel v. Sakharan*, 8 Bom. 615, and *Nirmal Chandra Mukherji v. Doyal Nath Battacharya*, 2 C. 130, that a person who institutes a suit in the ordinary way may be declared a pauper during the course of it. I have been referred to the Privy Council judgment in *Sobiri Thukaram v. Savi and another*, 40 M. L. J. 308, for the view that the same proposition applies to appeals but I can find no words in that judgment in support of that contention. I am however assured that it is the practice of this court to enable an appellant to qualify as a pauper subsequent to the institution of the appeal and it seems to me that the analogy of the decision with regard to a suit will hold in this respect. Pushing that principle a little further, an appellant who has conducted his appeal otherwise than as a pauper should be allowed to plead pauperism in a proceeding connected with the appeal, that is to say, in a review application. I think on these principles that an application to file a review application in *forma pauperis*, will lie."

### Article 6.

Copy or translation of a judgment or order not being or having the force of a decree.	When such judgment or order is passed by any Civil Court other than a High Court, or by the presiding officer of any Revenue Court or Office, or by any other Judicial or Executive Authority—	
	(a) If the amount or value of the subject-matter is fifty or less than fifty rupees.	Four annas, (Six as. in Bengal, Bihar and Orissa, Central Provinces, Madras and United Provinces.)
	(b) If such amount or value exceeds fifty rupees.	Eight annas, (Twelve as. in Bengal, Bihar and Orissa, Central Provinces, Madras and United Provinces)
	When such judgment or order is passed by a High Court.	One Rupee. (One rupee and eight as. in Bengal, Bihar and Orissa, Madras and United Provinces.)

### COMMENTARY.

**Local amendments.**—This Article is amended in Bengal, Bihar and Orissa, Central Provinces, Madras and United Provinces, and the fee has been enhanced as noted in the third column.

**Judgment.**—For the definition of a judgment, see s. 2 clause (9) of the Civil Procedure Code. It means the statement given by the Judge of the grounds of a decree or order.

**Order.**—An order is the formal expression of any decision of a civil court which is not a decree—s. 2, clause 14 of the Civil Procedure Code.

**Decree.**—A decree means the formal expression of an adjudication which so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may either be preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within s. 47 or s. 144 but shall not include (a) any adjudication from which an appeal lies as an appeal from an order, or (b) any order of dismissal for default. See s. 2, clause 2 of the Civil Procedure Code.

**Scope of the Article.**—Articles 6, 7 and 9 provide for all judgments, decrees and orders. Copies of judgment or order not having the force of a decree are provided for in Article 6 while those of decrees and orders having the force of a decree are provided for in Article 7. These relate to civil courts. Copy or translation of a judgment or order of a criminal court is provided for in Madras by Article 6-A. Those not provided for by Articles 6 and 7 and by Article 8 at Madras are provided for in Article 9.

Cases to which Articles 6 and 7 apply have got a money value and the fee is levied as per the valuation while Article 9 applies to cases where the value could not be computed but the words in the copy have therefore to be counted.

**Article 6-A (Madras).**—This is a new Article added by the Madras Amendment Act and provides a fee of 8 annas for a copy or translation of a judgment or order of a criminal court.

## Article 7.

Copy of a decree or order having the force of a decree,

When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court;—

(a) If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees.

(b) If such amount or value exceeds fifty rupees.

When such decree or order is made by a High Court,

Eight annas. (Twelve annas in Bihar and Orissa, Central Provinces and United Provinces.)

One rupee (One rupee and eight annas in Bihar and Orissa, Central Provinces and United Provinces.)

Four rupees. (Six rupees in Bihar and Orissa).

## COMMENTARY.

**Local amendments.**—This Article has been amended in Bihar and Orissa, Central Provinces and United Provinces and the fee enhanced.

This Article applies to decrees or orders having the force of a decree while the preceding Article applies to orders which have not the force of a decree.

**Order having the force of a decree.**—Vide, orders under ss. 47, 144 etc., or an order rejecting a plaint under the Code of Civil Procedure. *See also* Commentaries under Sch. II, Art. 11.

**Application of the Article**—Where the decree or order relates to subject-matter which has got a money value, this Article applies and there is a graduated scale of fees, according to the valuation. But where the subject-matter is not capable of valuation, and a fixed fee is paid it appears that Art. 9 is the proper article to apply.

## Article 8.

Copy of any document liable to stamp duty under the Indian Stamp Act, 1879, when left by any party to a suit or proceeding in place of the original withdrawn.	(a) When the stamp duty chargeable on the original does not exceed eight annas [one rupee in Bombay.]	The amount of the duty chargeable on the original. (One and a half times the amount of the duty chargeable on the original in Bihar and Orissa.)
	(b) In any other case.	Eight annas. (Twelve annas in Bihar and Orissa and United Provinces.)
		One rupee in Bombay.

## COMMENTARY.

**Local amendments.**—This article has been amended in Bihar and Orissa, Bombay and United Provinces.

**Indian Stamp Act, 1879.**—*See now* the Indian Stamp Act of 1899 (II of 1899).

**Application.**—The Article applies only to the case of copies of such documents as are liable to stamp duty under the Indian Stamp Act 1899. Again the original must have been placed on the records of a suit and sought to be withdrawn by the substitution of the copy.

This is one of the group of four Articles 6 to 9 which provide for the levy of court-fee on copies. O. 13, r. 9, Civil Procedure

Code provides for the return of an original document "produced by a party and placed on the record" during the pendency of that suit, in case, "the person applying therefor delivers to the proper officer, a certified copy to be substituted for the original" etc. It is to such cases of withdrawal that this article applies. *Rustomji v. Kala Singh*, 43 I. C. 383.

**Power of attorney—When liable to be stamped.—**

Where the plaintiff instituted a suit through an agent and produced the power of attorney for verification and left a copy thereof behind, the copy was not chargeable with any fee in as much as the original power of attorney was never placed on record (*See* O. 13, r. 9, Civil Procedure Code) and the return of the original was not a withdrawal under this Article. *Rustomji v. Kola Singh*, 43 I. C. 383. As to exemption *See* s. 19 (1) *supra*.

**Copies.**—Copies of documents are of different kinds. A copy of an extract from an account book may be prepared and filed by a party into court. They are more or less private copies. Copies that are prepared by Court are certified copies and Courts may prepare same at the instance of any party. The question whether any of these copies when filed into Court are liable to court-fee frequently arises. Or. 7, r. 17 provides "that subject to the provisions of the Bankers' Books Evidence Act, 1891, where a document on which the plaintiff sues is an entry in a shop book or other account in his possession or power, the plaintiff shall produce the book or account at the time of filing the plaint together with a copy of the entry on which he relies. The Court \* \* \* shall forthwith mark the document for purposes of identification and after examining and comparing the copy with the original shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed". So far as the copies that are produced by the party by virtue of this provision, are concerned, it is clear that the same would be chargeable to court-fee only in case the original of which it is a copy is liable to stamp duty under the Indian Evidence Act. Bankers' Books, shop accounts, etc., are not liable to stamp duty under the Stamp Act—vide *Harichand v. Jeevanna*, 11 Bom. 526. Courts could issue certified copies of documents filed in Court at the instance of any party. A party usually takes such certified copies to substitute them for the originals in a pending suit or proceeding which he desires to withdraw from the records of the suit. In such a case provision is made in the Code of Civil Procedure, O. 13, rr. 4 and 9 by which a party who files an original and undertakes to produce the original when required to do so can be permitted to take it back by substituting a certified copy thereof. The question is whether those certified copies are liable to court fee. This question was referred to a Bench of the Bombay High Court in *Nandu Bai v. Gau*, 27 Bom. 150. Their Lordships held that such certified copies are not liable to stamp duty but declined to give an opinion as to whether they are liable to court-fee. It is

clear that court-fee could not be collected on those certified copies under Art. 8, for Art. 8 is restricted to cases where the original document is liable to stamp duty under the Stamp Act. Here, the original account book not being so liable, the certified copy could not come within this Article. The only other Article under which it could be charged is Art. 9. This question was adverted to but not decided in the 11 Bombay case above referred to. Their Lordships observe as follows:—"Sch. I of the Court-Fees Act, Art. 8 shows that when a party to a suit withdraws an original document, any copy he leaves of that document is charged under it only if the original withdrawn is itself liable to stamp duty under the Stamp Act. Therefore, the copies left by the creditor are not chargeable with any court-fee under the Court-Fees Act, Sch. I, Art. 8." Their Lordships have not pronounced an opinion about the applicability of Art. 9.

## Article 9.

Number.		Proper fee.
Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act or copy of any account, statement, report or the like, taken out of any Civil or Criminal or Revenue Court or Office, or from the office of any chief officer charged with executive administration of a division.	For every three hundred and sixty words or fraction of three hundred and sixty words.	Eight annas. [Twelve annas in Bihar and Orissa.]

## COEMENTARY.

**Provincial amendment.**—The fee has been raised in Bihar and Orissa.

**Application.**—This is a residuary Article supplementing Articles 6 and 7 and provides for cases not provided for by them. This Article should be applied where there is no other specific provision in the Act.

**Judicial Proceeding.**—The expression 'Judicial' is used as contrasted with 'revenue'. There is no definition of the word 'proceeding' either in this Act or in the General Clauses Act. This has created a deal of confusion in understanding the exact scope of the several provisions of this Act where the word 'proceeding' is used. This word has been defined in the Civil Rules of Practice in Madras as including all documents presented to or filed in court by any party or

commissioner or other officer of court other than document produced as evidence. In essence, therefore, it includes pleadings as plaint, written statement, etc., documents in the nature of pleadings as affidavits, counter-affidavits and commissioner's report, etc. This definition is of course not exhaustive as the definition states that 'proceeding' includes all documents, etc. See also section 4 (m) of the Code of Criminal Procedure. The word 'includes' is also used there and it is contrasted to 'means' thereby giving courts certain latitude of construction. 37 Cal. 642.

Under this article, copy of any account, statement, report or the like taken out of any Civil or Criminal or Revenue Court or Office, etc. shall be chargeable with court-fee. This Article is more or less a residuary Article. It regulates the collection of fee in the case of a copy of any revenue or judicial proceeding or order not otherwise provided for in this Act. The only provision under which copies of documents which are not proceedings could be charged is only this Article and any copy could be held liable to court-fee only if it comes within the ambit of the words "Any account, statement, report or the like". It is a well recognised rule of construction that where the words "and the like" are used, the items which could be held to come under that expression should be *ejusdem generis* with the items set out previous to that. In that view the words "or the like" will comprise only documents which are akin to or partake the nature of an account, statement or report. In that view, it is doubtful whether it is correct to levy court-fee on any kind of copy which is filed by a party and which is not of the nature indicated above. If they are held not liable to court-fee then they become liable to stamp duty under Art. 24, Sch. I of the Stamp Act. The prevailing practice is to make all copies liable to court-fee irrespective of the fact whether it could be brought under the head 'proceedings' or be held to partake of the nature of an account, statement or report.

**Distinction between a judicial and administrative proceeding.** See *Rex v. Tulja*, 12 B. 36.

For a list of illustrative examples of what are judicial proceedings and what are not, see commentaries on the Code of Criminal Procedure by Mr. S. Ranganatha Iyer under s. 4.

**Criminal Courts.**—Judgments and orders of criminal courts fall under this Article. In the case of Madras a new Article 6-A has been added by the Provincial Amending Act, and it prescribes the levy of a fixed fee of annas eight only.

**Registrar.**—Record of reasons by registering officer to admit a document for registration is neither a revenue nor a judicial proceeding within the meaning of this Article.

**Revenue Orders.**—Copies of orders and proceedings of executive officers issued on plain papers to parties in the ordinary course of

administration, must if filed later on by parties in support of their petitions and applications are to be treated as 'copies' within the meaning of this Article. *Proceedings of Madras Board of Revenue No. 342 dated 7-11-1898*. Standing O. No. 124. Board of Revenue Madras Stamp Manual, 4th edn., page 342.

**Search fees.**—There is no provision of law and there is nothing in the Civil Rules of Practice (Madras) or any rule that govern the procedure of a Civil Court authorising the levy of search fees for supplying copies to litigants. When an application is made all that is required by a party is to supply stamps for copies and if the required number of copy stamps are supplied, it is the court's duty to furnish copies asked for, *Raja Saheb v. Sub-Collector*, 51 M. 599 = 1925 Mad. 370.

**Copies filed by a party in appeals or civil revision petitions in prior to decree cases in Madras.**—In all civil miscellaneous appeals or second appeals or civil revision petitions, filed against interlocutory orders in what are known as 'prior to decree cases' the question arises whether the copies of documents filed by the party ought to be stamped with the necessary court-fee. According to the procedure followed previously, as soon as such an appeal or civil revision petition was admitted the entire records were called up from the lower courts, so that there was practically a stay of proceedings though there was no such stay by the appellate court. To prevent this evil O. 43, r. 2, C. P. C. was re-enacted in Madras and it is provided therein that in the case of appeals from interlocutory orders made prior to decree, the court which passed the order appealed from, shall not send the records of the case unless an order has been made for stay of further proceedings in that court. As a consequence of this, the Appellate Side Rules of the Madras High Court require the party to file certified copies of documents in such appeals or civil revision petitions in prior to decree cases. Under the Court-Fees Act s. 4, court-fee has to be paid on those documents. It is a real hardship as these certified copies are required to be furnished only as an expedient measure to prevent an automatic stay of proceedings in lower courts. Normally if the records have been called for from lower courts there would have arisen no necessity for parties to file certified copies and pay court-fee thereon. Therefore it is hardly fair to require them to pay court-fees on these certified copies. But the Act leaving no discretion in the matter, courts have to collect the fee. It is for consideration whether the Government should not remit the court-fee payable on such copies under the powers vested in it under s. 35 of the Act.



# Article 10. [Repealed by the Guardians and Wards Act, 1890 (VII of 1890)].

It related to the fee leviable in respect of certificate or administration granted under Act XL of 1858 for the guardianship of minors in the Bengal Presidency and Act XX of 1864 for the Presidency of Bombay. This has been repealed by the Guardians and Wards Act 1890 (VII of 1890), s. 2.

## Article 11

Probate of a will or letters of administration with or without will annexed.	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees but does not exceed ten thousand rupees.	Two per centum on such amount or value.
	When such amount or value exceeds ten thousand rupees but does not exceed fifty thousand rupees.	Two and one-half per centum on such amount or value.
	When such amount or value exceeds fifty thousand rupees,	Three per centum on such amount or value.
	Provided that when, after the grant of a certificate under the Succession Certificate Act, 1889, [ <i>Part X of the Indian Succession Act, 1925—Bengal, Bombay and Central Provinces</i> ] or any enactment repealed by that Act, or under the Regulation of the Bombay Code, No. VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.	

## COMMENTARY.

**Amendments.**—Articles 11, 12 and 12-A were substituted for the original Articles 11 and 12, by the Succession Certificate Act, 1889 (VII of 1889), s. 13 (1).

**Local amendments.**—This Article has been amended by the several local amending Acts in Bengal, Bihar and Orissa, Bombay, Madras, Central Provinces and United Provinces, enhancing the rate of fee prescribed. All the Provincial Acts are reproduced in Appendix and the several amendments to this Article are extracted and set out below for facility of reference.

**Bengal.**—For the entries above the proviso in the second column, and for the entries in the third column, the following is substituted by Beng. Act IV of 1922 namely :—

when the amount or value of the property in respect of which the grant of probate or letters is made exceeds two thousand rupees, on such amount or value up to ten thousand rupees	Two per centum.
and	
when such amount or value exceeds ten thousand rupees, on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand rupees	Three per centum.
and	
when such amount or value exceeds fifty thousand rupees, on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh of rupees	Four per centum.
and	
when such amount or value exceeds a lakh of rupees on the portion of such amount or value which is in excess of one lakh of rupees [ <i>then added by Act XI of 1935</i> ] up to two lakhs and fifty thousand rupees,	Five per centum.
and	
when such amount or value exceeds two lakhs and fifty thousand rupees, on the portion of such amount or value which is in excess of two lakhs and fifty thousand rupees up to three lakhs of rupees,	Five and a half per centum.
and	
when such amount or value exceeds three lakhs of rupees, on the portion of such amount or value which is in excess of three lakhs of rupees up to four lakhs of rupees,	Six per centum.
and	
when such amount or value exceeds four lakhs of rupees, on the portion of such amount or value which is in excess of four lakhs of rupees up to five lakhs of rupees,	Six and a half per centum.
and	
when such amount or value exceeds five lakhs of rupees, on the portion of such amount or value which is in excess of five lakhs of rupees :	Seven per centum.

**Bihar and Orissa.**—For the entries above the proviso in the second column and for the entries in the third column, the following is substituted by Act I of 1922, namely :—

when the amount or value of the property in respect of which the grant of probate or letters is made exceeds two thousand rupees, on such amount or value up to ten thousand rupees	Two per centum.
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and

when such amount or value exceeds ten thousand rupees, on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand rupees

Three per centum.

and

when such amount or value exceeds fifty thousand rupees, on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh of rupees

Four per centum.

and

when such amount or value exceeds a lakh of rupees on the portion of such amount or value which is in excess of one lakh of rupees.

Five per centum.

**Bombay.**—The following is substituted for Art. 11 by Act II of 1932:—

11. Probate of a will or letters of administration with or without will annexed.

When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees, on the part of the amount or value in excess of one thousand rupees, up to ten thousand rupees.

Two per centum.

When the amount or value of the property in respect of which the grant of probate or letters is made exceeds ten thousand rupees, on the part of the amount or value in excess of ten thousand rupees, up to fifty thousand rupees.

Three per centum.

When the amount or value of the property in respect of which the grant of probate or letters is made exceeds fifty thousand rupees, on the part of the amount or value in excess of fifty thousand rupees, up to one lakh of rupees.

Four per centum.

When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one lakh of rupees, on the part of the amount or value in excess of one lakh of rupees, up to two lakhs of rupees.

Four and a half per centum.

11. Probate of a will or letters of administration with or without will annexed.—*Contd.*

When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two lakhs of rupees, on the part of the amount or value in excess of two lakhs of rupees, up to two lakhs and fifty thousand rupees.

Five per centum.

When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two lakhs and fifty thousand rupees, on the part of the amount or value in excess of two lakhs and fifty thousand rupees up to three lakhs of rupees.

Five and a half per centum.

When the amount or value of the property in respect of which the grant of probate or letters is made exceeds three lakhs of rupees, on the part of the amount or value in excess of three lakhs of rupees up to four lakhs or rupees.

Six per centum.

When the amount or value of the property in respect of which the grant of probate or letters is made exceeds four lakhs of rupees, on the part of the amount or value in excess of four lakhs of rupees, up to five lakhs of rupees.

Six and a half per centum.

When the amount or value of the property in respect of which the grant of probate or letters is made exceeds five lakhs of rupees, on the part of the amount or value in excess of five lakhs of rupees :

Seven per centum.

Provided that when after the grant of a certificate under Part X of the Indian Succession Act, 1925, or under Bombay Regulation VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.

**Central Provinces.**—The following is substituted for Art. 11 by Act XXVI of 1935, namely :—

Probate of a will or letters of administration with or without will annexed.	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees but does not exceed five thousand rupees	Two per centum on such amount or value.
	When such amount or value exceeds five thousand rupees but does not exceed ten thousand rupees.	One hundred rupees plus two and a half per centum on the amount or value in excess of five thousand rupees.
	When such amount or value exceeds ten thousand rupees.	Two hundred and fifty rupees plus three per centum on the amount or value in excess of ten thousand rupees.

Provided that when after the grant of a certificate under Part X of the Indian Succession Act, 1925, or under Bombay Regulation VIII of 1827 in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.

**Madras.**—The following is substituted for Art. 11 by Act V of 1922, namely :—

Probate of a will or letters of administration with or without will annexed.	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees but does not exceed five thousand rupees.	Two per centum on such amount or value.
	When such amount or value exceeds five thousand rupees,	Three per centum on such amount or value.
	Provided that when, after the grant of a certificate under the Succession Certificate Act, 1889, or under the Regulation of the Bombay Code No. VIII of 1827, in respect of any property included in an estate a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.	

**United Provinces.**—For the entries above the proviso in the second and third columns, the following is substituted by Act III of 1932, namely :

1. When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees, but does not exceed ten thousand rupees ; and	Two per centum on such amount or value.
2. When such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees ; and	Two and one-half per centum on such amount or value.
3. When such amount or value exceeds fifty thousand rupees, but does not exceed one lakh of rupees, for the portion of such amount or value which is in excess of fifty thousand rupees ; and	Three per centum on such amount or value.
4. When such amount or value exceeds a lakh of rupees, for the portion of such amount or value which is in excess of a lakh of rupees .	Four per centum on such amount or value.

**The taxable minimum.**—This Article has to be read with s. 19 (viii) *supra* which exempts estates of the value below Rs. 1,000. But this has been amended in Bengal, and Bihar and Orissa, and the minimum raised to Rs. 2,000 so that all estates of the net value up to Rs. 2,000 are exempt from the fee in those Provinces.

**Application for the grant of probate.**—The fee liviable on such an application for the grant of probate or letters of administration is provided for in Art. 1, Sch. II and the fee for the grant of such applications is provided for in this Article.

**Probate of a will.**—A 'Will' is defined in s. 2 (b) of the Indian Succession Act (Act XXXIX of 1925) as meaning the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.

**Probate.**—Is defined in s. 2 (f) of the same Act as meaning the copy of a will certified under the seal of a court of competent jurisdiction with a grant of administration to the estate of the testator.

**Grant of probate or letters of administration.**—As to whom probate shall be granted *see* s. 222 of the Indian Successions Act (Act XXXIX of 1925) and generally Part IX of the said Act.

(i) Probate of wills or letters of administration in case of intestacy is necessary in the case of persons governed by the Indian Succession Act, *viz.*, Europeans, East Indians, Americans, Jains and Parsis.

(ii) Probate is necessary in the case of will of an Indian Christian. But if he dies intestate no letters of administration are necessary.

(iii) Probate is necessary in the case of wills of Hindus, Jains, Sikhs and Buddhists to whom s. 57 applies, that is to say (a) in case of wills and codicils made by any Hindu, Jain, Sikh and Buddhist on or after 1st September 1870 within the territory subject to the Governor of Bengal and in the towns of Madras and Bombay or (b) in case of wills and codicils made outside those territories and limits so far as relates to immoveable property situated within those territories and limits. *Narayan v. Pandurang*, 34 B. 506.

(iv) No probate is necessary in the case of wills of Hindus, Jains, Sikhs and Buddhists made prior to 1st September 1870. *Krishna v. Panchuram*, 17 C. 272.

(v) No probate is necessary for the wills of Hindus, Jains, Sikhs and Buddhists to whom s. 57 does not apply, *i.e.*, to Hindus formerly governed by the Probate and Administration Act, *i.e.*, of wills made by them outside the Presidency of Bengal, and the towns of Madras and Bombay, and not relating to any immoveable property situate within those limits. *Bhagvan Singh v. Becharadas*, 6 B. 73. See also *Chidambara v. Krishnaswami*, 39 M. 365.

(vi) No letters of administration are necessary in the case of Hindus, Jains, Sikhs and Buddhists governed by s. 212 in the event of intestacy. It is only when proceedings have to be taken in court and when it is necessary in such proceedings for the plaintiff to prove his title under the will to the relief he claims that the court will insist upon probate or letters of administration being granted before plaintiff can take advantage of the decree. *Shankar v. Dattatraya*, 45 B. 1186.

(vii) No probate of the will and no letters of administration in case of intestacy of a Mahomedan are necessary. *Sakina v. Mahomed*, 37 C. 839; *Sir Mahomed Yusuf v. Hargowandas*, 47 B. 231.

(viii) No probate is necessary in the case of *Khojas*. *Abdul Karim v. Karmalai Rahimutula*, 22 Bom. L. R. 708. See Commentaries under s. 213 in Paruk's Indian Succession Act at page 235.

**Properties situate in different Provinces.**—As regards cases where property is situate in different Provinces, and where the rate of fees varies, or in different districts, or out of India, and further commentaries on the question of the determination of the value and the computation of the fee see under ss. 19-C and 19-I, *supra*.

**The Administrator-Generals Act.**—Under s. 31 of the Act, if the estate is worth less than Rs. 1,000, the certificate of the Administrator-General would be sufficient. *Narayan v. Pandurang*, 34 B. 506.

### Value of the property.

(1) *It is the value at date of application.*—The true value of the estate is its value at the date of the application for probate or Letters of Administration and not the value at the death of the testator. *Deputy Commissioner, Singhbhum v. Jagdish Chandar*, 1921 Pat. 206.

(2) *It is payable only in respect of the property as to which probate is granted and not in respect of property which may be ultimately administered by the executor (ibid).*

(3) *It is the net and not the gross value that is to be considered.* In the goods of *Chin Ah Yaing*, 24 I. C. 823; In the goods of *Queningbrough*, 22 C. L. J. 160; In *Re Catherine Thaddeus*, 24 I. C. 193; The decision to the contrary in *Collector of Maldah v. Nirode Kumini Dass*, 17 C. W. N. 21 is no longer good law.

There was a conflict of views between the several High Courts as to whether it is the gross or the net value of the estate that is the determining factor. It was held in the decision *In the goods of Mrs. E. E. W. Meik*, 40 All. 279, that to hold that duty is payable on the gross value is inequitable. Apart from any question of hardship Richard, C. J., observed as follows (p. 281 of the Report) "It remains to be considered whether upon the true construction of the Act notwithstanding any hardship that may arise, duty is nevertheless leviable upon the gross value of the estate. We think we are bound to read the Schedules together with the Act. \* \* On a true construction of the Act, no duty is payable where the value of the estate after making the deductions specified in Annexure B of the 3rd schedule is less than Rs. 1,000".

In the decision *In the goods of Harriet Teviot Kerr*, 18 C.L.J. 308, Mookerjee, J., has discussed the question elaborately and has held that the value referred to is only the net and not the gross value. His Lordship observed as follows:—"Article 11 of Schedule I to the Court-Fees Act provides that on a probate of a will or letters of Administration with or without will annexed when the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees but does not exceed ten thousand rupees a fee of 2 per centum has to be paid on such amount or value. When such amount or value exceeds ten thousand rupees but does not exceed fifty thousand rupees, a fee of two and one-half per centum on such amount or value has to be paid; when such amount or value exceeds fifty thousand rupees a fee of three per centum on such amount or value has to be paid. On behalf of the Administrator-General it has been argued that the fee payable ought



to be calculated on the difference between the gross value of the estate and the amount of the debts that is in the present case at the rate of two and one-half per centum on Rs. 18,066. On the other hand it has been contended on behalf of the Board of Revenue that the fee payable ought to be calculated in the manner following, namely, the fee payable on the gross value of the estate reduced by the fee payable on the debts. In the case before us, according to this contention the fee payable would be the difference between three per centum on Rs. 2,17,896 and three per centum on Rs. 1,99,830. The question raised is of considerable nicety and by no means free from difficulty, which is attributable to the fact that the Court-Fees Act has been amended piece-meal from time to time.

Sub-section 1 of s. 19-1 of the Court-Fees Act which was inserted by Act XI of 1899, provides that no order entitling the petitioner to the grant of probate or letters of administration shall be made upon application for such grant until the petitioner has filed in the court a valuation of the property in the form set forth in the third Schedule and the court is satisfied that the fee mentioned in No. 11 of the first schedule has been paid on such valuation. When we turn to the third schedule, we find that the petitioner is required to state in the form of valuation that he has truly set forth in Annexure B all the items which he is by law allowed to deduct. Annexure A is a statement of the valuation of the moveable and immoveable properties of the deceased. On the face of the form it is clear that the petitioner is required to state the value of the property and is allowed to deduct the amount shown in Annexure B as not subject to duty. The petitioner has thus to state net total of the valuation of the moveable and immoveable properties of the deceased. When we return to Annexure B we find that it is headed "Schedule of Debts etc." Then follow five different items as to each of which a statement of value has to be made. These are as follows:—(1) amount of debts due and owing from the deceased payable by law out of the estate, (2) amount of funeral expenses, (3) amount of mortgage incumbrances, (4) property held in trust not beneficially or, with a general power to confer a beneficial interest and (5) other property not subject to duty. It is plain that each of the first four items constitutes property not subject to duty; consequently, the principle formulated on behalf of the Board of Revenue, namely, that duty should be calculated upon the gross value of the estate as also upon the debts and the difference taken, is contrary to the legislative provision that the amounts of debts due and owing from the deceased and payable out of the estate constitutes property not subject to duty. It is further clear from the second paragraph of the Form of Valuation read with last clause of Annexure B and the first and last clauses of Annexure B, that the Legislature intended that the fee should be payable only on the difference between the gross value of the estate and amount of the debts; in other words as debts constitute

property not subject to duty, the difference between the gross value of the estate and the amount of debts, alone constitutes property subject to duty. But it has been urged on behalf of the Board of Revenue that Article 11 of the first Schedule militates against this view inasmuch as that Article requires the fee to be paid on the amount or value of the property in respect of which the grant of probate or letters is made, and it cannot be disputed that the grant of probate or letters is made in respect of the entire estate. The true mode of interpretation of a statute like the Court-Fees Act which has been repeatedly amended is not to consider individual sections but to take them as a whole and to give effect to the legislative intent upon a particular matter. It is conceivable that in 1899 when by s. 2 of Act XI of that year, s. 19-I was inserted in the Court-Fees Act as originally framed, the language of Article 11 of the first schedule was not carefully considered. Still it is the duty of the court to give effect as far as practicable, to all the sections of the statute as it stands in its amended form, and the court cannot rightly be invited to place such a construction upon the new sections introduced as would unquestionably destroy their effect. When the Legislature states explicitly in the third schedule which was inserted in 1899 that debts due and owing from the deceased are not subject to duty, that the petitioner is by law allowed to deduct the amount of debts from the gross valuation of the estate and that he is to state in Annexure A the net total value of the estate, the Court should not interpret Article 11 of the first schedule as an isolated provision. But the court should give effect to the combined provisions of Article 11 of the first schedule and the third schedule. From this point of view the fee should be calculated upon the net value of the estate obtained by the deduction of the amount of the debts from the gross value of the estate."

**Judgment debt due to estate—Valuation.**—It is open to the executor applying for probate to put upon a judgment debt forming part of the deceased's estate what he considers to be its fair value, having regard to the chances of recovery and pay duty on such value only. *In re Radhibai Rupji Sunderji*, 55 B. 844=1931 Bom. 419. The older decisions in *In re Ramchandra Ghose*, 24 Cal. 567 and *In the goods of E. L. Beake*, 13 Beng. L. R. 241 to the contrary do not seem to be correct.

**Provident Fund.**—Money standing to the credit of a deceased person in Railway Provident Fund deposit is personal property. It is an asset of the deceased and if such sum exceeds Rs. 2,000 it is liable to assessment. *In re Robinson*, 5 Luck. 712=1930 Oudh 145; but see contra *In re Digambar*, 1926 Nag. 306 and other cases cited below. Where a nominee of the Provident Fund of the deceased applies for letters of Administration to the estate of the deceased the amount of Provident Fund is not an asset liable to probate duty. *Secretary of State v. Mary Murray*, 1930 Cal. 252; *Agar v. James William*, 1925 Nag. 108; but see contra. *In*

*the matter of Mrs. Hamilton King*, 6 Rang. 558. The married sisters of the deceased are not dependants and if they are not nominees they can get the money only after producing probate or letters of administration or succession certificate, and court-fee is payable on the deceased's provident fund as being his property. *In re Coses Fernandez*, 1933 Sind 101=142 I. C. 359. See also the unreported decision of the Madras High Court in O. P. No. 110 of 1932 cited under s. 19-I.

**Joint Family Property.**—As to whether the undivided share of a deceased coparcener in the property of Hindu joint family governed by the Mitakshara school of Hindu law, is to be regarded as "property held in trust not beneficially" or otherwise has been the subject of a conflict of decisions in the several High Courts. This is not the only topic of Hindu law or Anglo Hindu law—if I could coin an expression to indicate the principles of Hindu law as settled or modified by the courts in India and the Judicial Committee of the Privy Council,—that coming in conflict with statute law mainly based on the principles of English jurisprudence has led to many anomalies and has led to use the words of Beaman, J., in the decision in *Kashinath v. Gourava Bai*, 39 B. 245 "to a good deal of theoretical absurdity". The whole difficulty arises on a difference of view about the proprietary right of a coparcener in joint family property. The concept of a joint family as laid down by the Privy Council in the leading case of *Appooier v. Appooier*, 11 Moo. I. A. 75 is that "no individual member can predicate of the joint and undivided property that he has a certain definite share" and as observed in *Ramachandran v. Damodhar*, 20 B. 467, each "coparcener is entitled to a joint benefit in every part of the undivided estate." Under these circumstances the question arises whether in respect of the deceased coparcener's share it should be said to have been held by him in "trust not beneficially" etc. as contemplated by the words in Annexure B to Schedule III.

The view of the CALCUTTA High Court and the later view of the BOMBAY High Court is that the property should be deemed to have been held in trust not beneficially, while the MADRAS and PATNA High Courts take a contrary view.

**Calcutta.**—See *In the goods of Pokurmial Agarwallah*, 23 C. 980 and *In re Bhubaneswar Tigunait*, 52 C. 871. In the latter case, the necessity for making Legislative provision for cases in which shares, Government security and Bank accounts belonging to Mitakshara joint family stand in the name of one member is stressed upon. See extract from judgment cited under s. 19-D *supra*.

**Bombay.**—The earlier view was laid down in *Kashinath v. Gourava Bai*, 39 B. 245, Beaman, J., has set out this view in a clear cut form. In that case there was admittedly a joint Hindu family consisting of a father and a minor son. The father made a will in effect bequeathing the whole property to his minor son. It was

contended by the executors on the authority of *Collector of Kaira v. Chuni Lal*, 29 B. 161, that the deceased testator had not beneficial interest in any part of the property devised and therefore that they are exempt from the payment of any duty. This contention was not upheld. Their Lordships went on to observe further as follows:

"The Court-Fees Act exempts from payment of duty any part of the estate of a deceased testator or person to whom letters of administration are sought or could be shown to have been held by him as bare trustee without himself having any beneficial interest therein or any power of beneficial disposition. Wills admittedly made by a member of a joint Hindu family purporting to dispose as of self acquired property, of joint family property in favour of the survivors have been solemnly propounded. Probate has seemingly been given as a matter of course. In this way the funds of the joint family property in the shares of companies have been obtained by the survivors. But the question arises whether survivors thus seeking to obtain their own property under the fiction of a devise, should be called upon to pay the full duty. \* \* \* Those who propound a will and claim under it can hardly be heard to say that the testator had no powers of beneficial disposition. When *ex concessis*, the alleged testator was a member of a joint Hindu family, and the whole property covered by the will was joint family property, one would have thought that there was no legal foundation for the will, no need of probate. It is not a satisfactory answer, that in probate proceedings the Court has no further concern in the matter than to see whether in fact the will was made, and whether in other respects it was a valid will. That is of course true but it does not exhaust the question. If those seeking probate mean to include the whole of the property devised under the exemption clauses, it does become the duty of the court to enquire so far, at least, as to satisfy itself that the conditions upon which exemption is granted have been fulfilled. Where, in the circumstances mentioned, the whole property is given to the sole survivor, who again *ex concessis* would take it in his own right, will or no will, the will propounded is on the face of it a mere nullity to which no effect could be given. Had it been necessitated owing to the testator having invested the joint family funds in the shares of the bank and other companies, then it appears to us that however anomalous the position, which is thus reached may be, it cannot be contended that since a will is necessary under which the nominal testator hands on this part of the joint family property to the survivor, he had not at the date of his death any beneficial interest in that property and was never more than a bare trustee of it for the survivor or survivors. The reason for the exemption is clear. But neither that reason nor any consideration of policy which occurs to us would warrant its extension this length. Although the devisee under the will takes but what is his own, if he needs a will to get it, we do not see why he should not pay the ordinary duty. He cannot be allowed to blow hot and cold and say in one breath that a

will was, and was not necessary. It is only by adopting the general proposition, which we find ourselves entirely unable to adopt, that no member of an undivided Hindu family has any beneficial interest in any part of the joint Hindu family property during the life time that the decision upon which the cross-appellants here rely could be supported. Where it is merely a question of policy we should be disposed to take an exactly opposite line, and say that all Hindus taking by survivorship ought to pay duty on the value of the estates so taken, just as all other subjects not governed by the Hindu law of the joint family have to pay duty to the State on the property devised or coming to them as heirs. In our opinion, the cross appellants ought to pay duty on the whole estate covered by the will." Beaman, J., further referred to an earlier decision of the Bombay High Court in *Collector of Kaira v. Chunilal*, 29 B. 161, where it was held that a member of joint Hindu family had no beneficial interest in any part of the joint estate and therefore that survivors propounding his will in order to be able to obtain shares standing in his name, were entitled to claim exemption on the ground that the deceased in his life time had not beneficial interest in the said shares. This was distinguished from the present case for the reason "that in Chunilal's case the application had been for letters of administration and in the present case we are dealing with probate. Possibly different arguments may be drawn from these premises, but we are clearly of opinion that where the matter in question is probate, the parties claiming under the will cannot go behind its terms or claim any exemption whatsoever upon allegations utterly inconsistent not only with the fact of the will itself but with express statements made therein." But this view was dissented from by a later Full Bench of the Bombay High Court in *Keshavlal v. The Collector of Ahmedabad*, 48 B. 75 F. B. A Hindu father and his two sons lived together as a joint family. A portion of the family property consisting of shares stood in the name of the father. The two sons separated after their father's death. Each of the sons applied separately for limited letters of administration in respect of the shares that came to him on partition. The Court granted the letters applied for but levied full court-fees over them. On appeal it was held, that no court-fees should be levied on the limited letters of administration sought by the son as to the shares belonging to the joint family that came to him on partition with his brother.

"We have considered the arguments urged on both sides and my view is that s. 19-D has been correctly interpreted by this Court in the *Collector of Kaira v. Chunilal*, 29 B. 161, and that even if there be a doubt as to the true meaning of the expression "property whereof the deceased was possessed or entitled either wholly or partially as a trustee" or the expression "property held in trust not beneficially or with a general power to confer a beneficial interest" the interpretation accepted in Calcutta so far back as 1896 and in Bombay so far back as 1904 and acquiesced in by the Legislature

should now be accepted as representing the true scope of the said expressions. First as regards the meaning of the expression, in its application to joint family property with the incident of survivorship governed by the Mitakshara and the Mayuka in this Presidency it must be remembered that while the holder, a member of the family, in one sense is beneficially interested in the whole, the other members of the coparcenary are also beneficially interested in the whole and the beneficial interest of the holder is limited by the extent of the interest of other members. Further that interest disappears altogether on his death; and the survivors become the sole beneficiaries in the estate which stands in the name of the deceased person. On his death what is called his estate is no estate of his; and the legal title which still continues in the dead man is really the title of a man, whose beneficial interest in the property on his death is nothing. As regards property of this character it could properly be said that the deceased died possessed of it or was entitled to it either wholly or partially as a trustee within the meaning of s. 19-D. I do not think that the words used in the Schedule viz. 'Property held in trust not beneficially or with general power to confer beneficial interest', conflict with this view. I do not say that this point is free from difficulty. But if the rule of construction to be applied to an enactment of this nature is, as I think it should be, that a liberal construction ought to be given to words of exception confining the operation of the duty, I think that the words have been rightly construed to cover a case of a joint family property held by coparcener for the joint benefit of himself and others and in which his beneficial interest ceases on his death, so that at the date of his death his legal title or possession is without any beneficial interest therein. He would have no power on his death to confer a beneficial interest as he would have for instance in the case of his self acquired property.

The view of the Madras High Court proceeds on somewhat different lines; I have considered the *ratio decidendi* in that case. But I am unable to hold that the fact that a joint sharer has power to alienate his share for consideration in this presidency could alter the character of the property. If a sharer simply alienates his share for consideration and dies the next day without effecting partition, the purchaser would not get his share, as it would cease to exist before it is seized. He cannot make a gift of his undivided share and he cannot dispose of it by will. I am unable to hold that such limited power of dealing with the property can make any difference in the character of the deceased's title or possession of the property at the time of his death. With great respect for the learned judges I am unable to accept the *ratio decidendi* in that case. Lastly, even assuming that the scope of the expression used in s. 19-D and the Schedule is not clear, it cannot be said that it is so clear the other way that we should now decide to depart from the practice which has been uniformly followed in this

Presidency for so many years and which has the sanction of judicial interpretation put upon the Court-Fees Act so far back as 1904.

During the interval, the legislature has not indicated that it is not consistent with the true intention of the legislature. Having regard to the history of the legislation on this point and its application for many years, I do not think that the view taken in the *Collector of Kaira v. Chunilal*, 29 Bom. 161, can be held to be wrong." Regarding the observation that "if a sharer simply alienates his share for consideration and dies the next day without effecting partition the purchaser would not get his share as it would cease to exist before it is seized", it is doubtful whether it is correct especially in view of the repeated pronouncements from the Judicial Committee of the Privy Council downwards that an unequivocal declaration of intention to divide results in a disruption of status.

**Madras.**—The earliest decision of importance in Madras is that reported in 33 Mad. 93 F.B., *In the matter of Desu Manavala Chetti*.

Under the Mitakshara law, as administered in this part of India, an undivided coparcener has power to mortgage or alienate his undivided share and he can at any time enforce partition of his own share. He cannot therefore be said to hold his own share of the undivided property "as trust property" not beneficially or with general power to confer a beneficial interest within the meaning of this word as used in Annexure B of the Form for valuation in Schedule III of the Court-Fees Act, although, as regards the shares of others he may be said to so hold them. Where a surviving coparcener governed by the Mitakshara Law applies for Letters of Administration in respect of property standing in the name of a deceased coparcener, which was joint family property of the applicant and the deceased, he is bound to include in the valuation of the property, the value of the share to which the deceased was entitled at the moment of his death and he cannot under s. 19-1 (1) of the Court-Fees Act, obtain letters of administration to joint family property, unless he includes such share in the valuation and pays the proper *ad valorem* court-fees upon it.

Section 19-1 (1) of the Court-Fees Act, 1870, as amended by Act XI of 1889, provides that no order entitling a petitioner to the grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the court a valuation of the property in the form set forth in the third Schedule, and the court is satisfied "that the proper fee has been paid" on such valuation. That form consists of an affidavit with two annexures, in one of which, Annexure A, is to be specified the property and credits of the deceased and in Annexure B, is to be set forth the items which the applicant "is by law allowed to deduct." Among these items are, "property held in trust not beneficially or with general power to confer a beneficial interest"

and "other property not subject to duty." The question is, whether the property for which the petitioner seeks letters of administration can be said to come under either of these categories, and, if so, whether wholly or partially. The petitioner contends that the property was trust property in the hands of the deceased, and he relies on the decisions in the case of *In the goods of Pokurmull Augurwallah*, 23 Cal. 980 and the *Collector of Kaira v. Chunilal*, 29 Bom. 161, and also on two unreported decisions of this Court. It is to be observed that in the Calcutta cases there was no argument and the decision proceeded on a statement drawn by the taxing officer in which great stress was laid on the fact that under the Mitakshara Law (as administered in Bengal) "an undivided coparcener cannot dispose of his share in the joint property, unless in case of necessity, without the consent of his coparceners". In neither the note to the taxing officer nor in the order of the taxing officer nor in the order of the court is there any reference to the words "not beneficially or with general power to confer a beneficial interest" which follow the word "property held in trust", in Annexure B. In the case of the *Collector of Kaira v. Chunilal*, 29 Bom. 161, the chief question considered was whether limited grant sought for in that case could be granted at all. The character of the property as trust property was not discussed in the judgment but was held to be concluded by the decision in *In the goods of Pokurmull Augurwallah*, 23 Cal. 980. In neither of the unreported cases in this court was the question argued. In the earlier of them (*In re T. Swaminathaiyer deceased*), the question was raised by the taxing officer in a note for orders in which he referred to *In the goods of Pokurmull Augurwallah*, 23 C. 980, as supporting the petitioner's contention that the ancestral joint property was held by the deceased as trust property and therefore not liable to duty on taking out letters of administration, and the learned Chief Justice accepted the suggestion of the taxing officer. In the latter case no note for orders is forthcoming but Wallis, J., seems to have followed the precedent "*In re Swaminatha Aiyar*". Thus it would seem that the two precedents in this Court, and also the Bombay case followed the decision in *In the goods of Pokurmull Augurwallah*, 23 Cal. 980. But in this Presidency, differing from Bengal, it has long been held that under the Mitakshara Law as administered in this part of India an alienation by sale or mortgage by an undivided member of his interest in the joint family property, is valid. *Aiyyagari Venkataramayya v. Aiyyagari Kamayya*, 25 Mad. 690. He can also at any time enforce partition of his own share. That being so, it seems impossible to hold that the property in the present case was held by the deceased, so far at least as his own share in it was concerned, "as trust property not beneficially or with general power to confer a beneficial interest in it." He could have claimed partition, or he could have sold or mortgaged his undivided share and have applied the proceeds for any purpose he pleased. In my opinion, therefore, the interest of



the deceased in the joint family property in the present case, does not come within the category of "property held in trust, not beneficially or with general power to confer a beneficial interest"; nor do I think that it is possible to hold that it comes within the only other category in Annexure B which the petitioner argues is applicable; viz. "other property not liable to duty". These words must refer to some exemption from liability enacted by the statute law, as, for example, under s. 19-C of the Court-Fees Act or under an authority conferred by the statute law, as for example an exemption by Government under the authority conferred by s. 35 of the Court Fees Act; but no such exemption is alleged in the present case."

*In the goods of Brindaban Ghose* deceased, (1873) 11 B. L. R. App. 39=19 W. R. 230, two brothers were the only coparceners in a joint Hindu family. One of them, died and the other applied for and obtained Letters of Administration in respect of deceased's half share in the joint family property on payment of *ad valorem* duty on such half share, and Sir R. Couch, C. J., held that the half share "should be treated as trust property and be exempted from the two per centum *ad valorem* fee."

A similar view was taken by Petheram, C. J., in the case of the property held in common by Europeans with right of survivorship. *In the goods of Froeschman*, 20 Cal. 575. The reason for this view is set out by Miller, J., in the decision in 33 M. 93 at page 99 as follows: "The principal reason for the exemption from duty of property vested in the deceased as a trustee, is that the beneficiary out of whose pocket the payment would come, acquires nothing by the trustee's death. \* \* The deceased could use his share as security on which to borrow money for himself and could at any time demand that it be carved out of the whole and placed at his disposal by a partition. A trustee cannot do these things in the trust property." This was followed by the decision in *Annapurnaamma v. Atchutaramaya*, 100 I.C. 111=1927 Mad 1101. A Hindu father who had three sons executed a will by which he bequeathed his entire property in favour of his three sons, making his wife executor under the will. On an application by the wife as executor for probate, she paid stamp duty on  $\frac{1}{4}$ th of the property dealt with under the will on the ground that, although the testator had dealt with the entire property, he was entitled only to  $\frac{1}{4}$ th of it. The learned District Judge however, relying on *Kashinath Parashram v. Gourabai*, 28 I.C. 473=39 Bom. 245=17 Bom. L. R. 169, held that the petitioner was bound to pay stamp duty on the value of the entire estate and that the decision in *In re Desu Manavala Chetty*, 4 I. C. 1064=33 M. 93=9 M. L. J. 591, relied on by the petitioner was applicable only to Letters of Administration and not to probate. In appeal their Lordships observed as follows:—"The learned District Judge has overlooked that *Kasinath Parashram v. Gourabai*, 28 I. C. 473=39 Bom. 245=17 Bom. L. R. 169, has been overruled by *Keshavalal Punjalal*

*v. Collector of Ahmedabad*, 77 I. C. 749 = 48 B. 75 = 22 B.L.R. 1240 = 1924 Bom. 228. We think we must follow the principle laid down in *In re Desu Manavala Chetty* and hold that petitioner is only bound to pay stamp duty for probate on the amount of the right, title and interest of the testator in the property bequeathed and so far as ancestral property is concerned that would be  $\frac{1}{4}$ th of the ancestral estate. If, of course, there is other separate non-ancestral property, separate fee will have to be paid on that."

**Patna.**—The High Court of Patna has held in *In re Estate of Ram Kumar Prasad*, 5 Pat. L. J. page 510 that they prefer to follow the decision of the High Court of Madras in 33 Mad. 93 and the Bombay view in 39 B. 245. "The factum of the will alone can be established in probate proceedings and it is not for the court in these proceedings to consider whether the testator had or had not the power to dispose of the property in the will."

**Property over which the deceased had power of appointment.**—The question is whether it is property. The view taken by the High Court of Madras in *In re Lakshminarayani Ammal*, 25 M. 515, is that the general power of appointment which a deceased possessed is property. "Property is the most comprehensive of all terms which can be used, inasmuch as it is indicative and descriptive of every possible interest which the party can have" per Langdale, M. R., in *Jones v. Skinner*, 5 L. J. Ch. 87 at p. 99. This view is not accepted by the Calcutta High Court in *In the goods of Saleh Manasseb*, 60 Cal. 1016 = 1933 Cal. 924. Lord Williams, J., observes at page 1020 of the 60 Cal. case, that the Madras "decision was based on some confusion of thought, and an incorrect reference, and is otherwise unsatisfactory." There seems to be hardly any justification for this strongly worded criticism. The Calcutta High Court holds that it is not property, because according to the English decisions based on s. 38 of 59 Geo. IV, C. 184, which is exactly similar in language to Art. 11 Sch. I of the Court-Fees Act, such property over which a person has only a general power of appointment is not his property. The English law was amended by ss. 4 and 5 of the Stamp Duties Act of 1860 (23 Vict., C. 15) and by s. 2 of the Finance Act of 1894 (57 and 58 Vict., C. 50) and consequently duty is now payable on such property. There being no provision in the Court-Fees Act corresponding to the amending English Act it is opined that such property is not taxable. But this view overlooks s. 91 of the Indian Succession Act, under which a general power of appointment is property, since where the donee of the power bequeaths all his property, it includes also the property over which he has a general power of appointment. Further Annexure B of Sch. III exempts property held in trust. But an exception is grafted to it *viz.* property over which the testator had a general power of appointment. If such property is not property liable to be taxed under the Act, where is the necessity for this specific exception in the exemption clause? It is observed by

Lort Williams, J., in page 1021 of the Calcutta case, that the only evidence of any intention on the part of the legislature to include property subject to a general power of appointment is the negative evidence supplied by Annexure B. In the opinion of the learned judge "some plainer indication of intention is needed before the words of the Act could be so extended." But what about the accepted rule of construction of statutes that effect should be given to every word of the statute. Will not the view of the Calcutta High Court render that clause in Annexure B redundant? Consequently it is submitted that the view taken by the High Court of Madras seems to be the better one.

**Remission of fee.**—G. O. No. 572 Law (General) dated 20th February 1926 "In exercise of the powers conferred on them by s. 35 of the Court-Fees Act, 1870 (VII of 1870) as amended by the Devolution Act, 1920 (XXXVIII of 1920) and the Madras Court-Fees (Amendment) Act, 1922 (Madras Act V of 1922) and in supersession of Para I of Part II of Notification No. 359 Law (General) dated 12th September 1921 published at page 1011 of Part I of the Fort St. George Gazette dated 11th October 1921, the Local Government are pleased to make in the Presidency of Madras, the remissions hereinafter set forth in the fees leviable under articles 11 and 12 of the First Schedule to the said Act on the property of :—

(1) any person subject to the Naval Discipline Act (29 and 30 Vict., C. 109), the Army Act (44 and 45 Vict., C. 58), the Air Force Act (7 and 8 Geo. V. C. 51) or the Indian Army Act, 1911 (VII of 1911) who is killed while on active service or on service which is of a warlike nature and involves the same risk as active service or dies from wounds inflicted, accidents occurring or disease contracted while on such service, and

(2) any person being a Government Servant Civil or Military who dies from wounds inflicted while in actual performance of his official duties, or in consequence of those duties.

**Remissions.**—(a) Where the amount or value of the property, in respect of which the grant of probate or Letters of Administration is made, or which is specified in the certificate under Part X of the Indian Succession Act, 1925, does not exceed Rs. 50,000 the value of the fees leviable in respect of that property;

(b) Where the said amount or value exceeds Rs. 50,000 the whole of the said fees in respect of the first Rs. 50,000.

(Amended in G.O. No. Mis. 3331 Law (General) dated 3-10-1928)

## Article 12.

Certificate under the  
Succession Certificate Act,  
1889.

In any case

...

Two per centum on the amount or value of any debt or security specified in the certificate under s. 8 of the Act, and three per centum on the amount or value of any debt or security to which the certificate is extended under s. 10 of the Act,

NOTE.—(1) The amount of a debt is its amount, including interest on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained.

(2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act and where such a power has been so conferred whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security, or for both purposes, the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.

## COMMENTARY.

**Local amendments.**—This article has been amended in Bengal, Bihar and Orissa, Bombay, Central Provinces, Madras and United

Provinces. See the Amending Acts in Appendix. The amendments are indicated below for facility of reference.

**Bengal.**—For Article 12 of the first schedule the following Article has been substituted by Act XI of 1935, namely.

<p>12. Certificate When the amount or under the value of any debt or Indian Succession Act, security specified in the certificate under section 374 of the Act exceeds one thousand rupees, and when the aggregate amount or value of any debts or securities specified in the certificate and of any debts or securities to which the certificate has been extended under section 376 of the Act exceeds one thousand rupees</p>	<p>Two per centum on the first ten thousand rupees, three per centum on the next forty thousand rupees, four per centum on the next fifty thousand rupees, and five per centum on the remainder of such amount or value.</p> <p>in respect of such portion of the aggregate amount or value as consists of the amount or value of debts or securities so specified, the fee hereinbefore provided in that behalf in this article</p> <p>and</p> <p>there per centum on such portion of the first ten thousand rupees, four and a half per centum on such portion of the next forty thousand rupees, six per centum on such portion of the next fifty thousand rupees, and seven and a half per centum on such portion of the remainder of such aggregate amount or value as consists of the amount or value of debts or securities to which the certificate has been extended,</p> <p><i>Note.</i>—(1) The amount of a debt is its amount, including interest on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained</p> <p>(2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act and where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security, or for both purposes, the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.</p>
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In the third column of the said article as amended above,

(a) after the words " five per centum " the following has been inserted, namely :—

" on the next one lakh and fifty thousand rupees,  
five and a half per centum on the next fifty thousand rupees,  
six per centum on the next one lakh of rupees,

six and a half per centum on the next one lakh of rupees,  
and  
seven per centum "

(b) after the words " seven and a half per centum " the following has been inserted, namely : —

" on such portion of the next one lakh and fifty thousand rupees,  
eight and a quarter per centum on such portion of the next fifty thousand rupees,

nine per centum on such portion of the next one lakh of rupees.

nine and three-quarters per centum on such portion of the next one lakh of rupees,

and

ten and a half per centum."

**Bihar and Orissa.**—For the entry in the second column of of Article 12 and for the first paragraph in the third column of the said Article, the following has been substituted by Act I of 1922, namely :—

When the amount or value of any debt or security specified in the certificate under s. 8 of the Act exceeds one thousand rupees on such amount or value up to ten thousand rupees

Two per centum and on the amount or value of any debt or security to which the certificate is extended under s. 10 of the Act, three per centum.

and

when such amount or value exceeds thousand rupees, on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand rupees,

Three per centum and on the amount or value of any debt or security to which the certificate is extended under s. 10 of the Act four and-a-half per centum.

and

when such amount or value exceeds fifty thousand rupees on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh of rupees,

Four per centum, and on the amount or value of any debt or security to which the certificate is extended under s. 10 of the Act, six per centum.

and

when such amount or value exceeds a lakh of rupees, on the portion of such amount or value which is in excess of one lakh of rupees.

Five per centum, and on the amount or value of any debt or security to which the certificate is extended under s. 10 of the Act, seven and-a-half per centum.

**Bombay.**—The following Article is substituted by Act II of 1932, namely : —

12. Certificate under Part X of the Indian Succession Act, 1925.

The fee leviable in the case of a probate (Article 11.) on the amount or value of any debt or security specified in the certificate under s. 374 of the Act, and one and a half times this fee on the amount or value of any debt or security to which the certificate is extended under s. 376 of the Act.

Note :—(1) The amount of a debt is its amount including interest on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained.

(2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act; and where such a power has been conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security, or for both purposes, the value of the security is its market value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.

**Central Provinces.**—The following Article and entries have been substituted by Act XVI of 1935, namely :—

12. Certificate under Part X of the Indian Succession Act, 1925, (XXXIX of 1925).

When the amount or value of any debt or security specified in the certificate under sec. 374 of the Act exceeds one thousand rupees but does not exceed five thousand rupees.

Two per centum on such amount or value and three per centum on the amount or value of any debt or security to which the certificate is extended under sec. 376 of the Act.

When such amount or value exceeds five thousand rupees but does not exceed ten thousand rupees.

One hundred rupees plus two and a half per centum on the amount or value in excess of five thousand rupees, and four and a half per centum on the amount or value of any debt or security to which the certificate is extended under sec. 376 of the Act.

When such amount or value exceeds ten thousand rupees.

Two hundred and fifty rupees plus three per centum on the amount or value in excess of ten thousand rupees and seven and a half per centum on the amount or value of any debt or security to which the certificate is extended under sec. 376 of the Act".

**Madras.**—The following is substituted for Art. 12 by Act V of 1922, namely :—

12. Certificate under the Succession Certificate Act, 1889.	When the amount or value of any debt or security specified in the certificate under s. 8 of the Act does not exceed five thousand rupees.	Two per centum on such amount or value, and three per centum on the amount or value of any debt or security to which the certificate is extended under s. 10 of the Act.
	When such amount or value exceeds five thousand rupees.	Three per centum on such amount or value and four and a-half per centum on the amount or value of any debt or security to which the certificate is extended under s. 10 of the Act.

**Note**—(1) The amount of a debt is its amount, including interest, on the day on which the inclusion of the debt in the certificate is applied for so far as such amount can be ascertained.

(2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act; and where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security, or for both purposes, the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.

**United Provinces.**—For the entries in the first and second column and for the first paragraph in the third column, the following has been substituted by Act III of 1932, namely :—

12. Certificate under the Indian Succession Act, 1925.	1. When the amount or value of any debt or security specified in the certificate under section 374 of the Act does not exceed twenty thousand rupees;	Two per centum on such amount or value and three per centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act.
	and	
	2. When such amount or value exceeds twenty thousand rupees, but does not exceed fifty thousand rupees, for the portion of such amount or value which is in excess of twenty thousand rupees;	Two and a half per centum on such amount or value and three and three-quarters per centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act.



<p style="text-align: center;">and</p> <p>3. When such amount or value exceeds fifty thousand rupees, but does not exceed a lakh of rupees, for the portion of such amount or value which is in excess of fifty thousand rupees.</p>	<p>Three per centum on such amount or value and four and a half per centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act.</p>
<p style="text-align: center;">and</p> <p>When such amount or value exceeds a lakh of rupees, for the portion of such amount or value which is in excess of a lakh of rupees.</p>	<p>Four per centum on such amount or value and six per centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act.</p>

**The Succession Certificate Act, 1889.**—This has been repealed entirely (except s. 13) by the Indian Succession Act 1925 Sch. IX. Now Succession Certificates are issued under Part X of the Indian Succession Act. See s. 370 and the following sections.

**Grant of certificate.**—A succession certificate is not granted in those cases where Probate or Letters of Administration is necessary. The effect of s. 370 of Indian Succession Act is explained in the notes on clauses on the Bill, as follows:—"The effect of the section is apparently that succession certificate cannot be granted in a case where the law requires probate or letters of administration to establish a representative title in the court. In cases where probates or letters of administration are not essential, a certificate can apparently be granted. The clause is based on this view of the law."

**Security.**—For the purpose of the issue of Succession Certificates 'security' has been defined in s. 370 (2) as follows:—

(a) any promissory note, debenture, stock or other security of the Government of India or of a Local Government;

(b) any bond, debenture, or annuity charged by the Act of Parliament on the revenues of India;

(c) any stock or debenture of, or share in, a company or other incorporated institution;

(d) any debenture or other security for money issued by or on behalf of a local authority;

(e) any other security which the Governor-General in Council may by notification in the Gazette of India, declare to be a security for the purpose of this Part (Part X, Indian Succession Act).

**Section 8 of the Act.**—Section 8 of the Succession Certificate Act 1889 is reproduced in s. 374 of the Indian Succession Act. It

provides that when the District Judge grants a certificate, he shall specify the debts and securities set forth in the application for the certificate, and may thereby empower the person to whom the certificate is granted

- (a) to receive interest or dividends on, or
- (b) to negotiate or transfer, or
- (c) both to receive interest or dividends on and to negotiate or transfer the securities or any of them.

**Section 13 of the Succession Certificate Act.**—Arts. 12 and 12-A were substituted for the old Art. 12 of the Court-Fees Act by s. 13 of the Succession Certificate Act. S. 13 of that Act still remains in force and is not repealed by the Indian Succession Act 1925.

**No exemption of fee in the grant of succession certificates.**—As in the case of Probates and Letters of Administration there is no exemption of the payment of any court-fees where the value of the estate is below Rs. 1,000, though this has been remedied in Bengal, Bihar and Orissa and Bombay by amendment Acts. Nor was there such an exemption under Art. 12-A either as it originally stood. But Art. 12-A has since been amended by the Court-Fees Amendment Act VII of 1910 and amended locally by Bombay Act III of 1932.

**Extension of certificate.**—Section 10 of the Succession Certificate Act dealt with extension of certificates and it is now reproduced by s. 376 of the Indian Succession Act. By virtue of that section a District Judge may on the application of the holder of a certificate extend the certificate to any debt or security not originally specified therein, and every such extension shall have the same effect as if the debt or security to which the certificate is extended had been originally specified therein. In *In re Nalinikanta Pal*, 60 Cal. 1262 = 37 C.W.N. 930, it has been held that, where the original application is in respect of an amount less than Rs. 1,000 but the amount is exceeded by a later application, court-fee is payable at 2 per cent on the original certificate and at the enhanced rate of 3 per cent under Bengal Act II of 1922 in respect of the extensions. In this case the petitioners originally applied for a certificate for the collection of debts amounting to Rs. 853-9-6, and the certificate was granted. Some time afterwards they applied for extension of the original certificate in respect of some further debts amounting to Rs. 146-5, and the extension was granted. No court-fee was paid on these two occasions. Later on they again applied for a further extension in respect of two debts amounting to Rs. 300 and deposited Rs. 9 as court-fee on the Rs. 300. It was held that as the total of the debts in the original certificate and the two extensions together exceeded Rs. 1,000, court-fee was payable on the amount of the original certificate at 2 per cent and on the amounts of the extensions at 3 per cent. It is submitted that this ~~decision cannot be justified on the wording of the Bengal Art. 12 as it~~

stood prior to the Amending Act XI of 1935. According to the Article as it was worded, court-fee was payable only if the amount of the original certificate exceeded Rs. 1,000, and to whatever extent a certificate for an amount not exceeding Rs. 1,000 was subsequently extended, court-fee was payable neither on the original amount nor on the extensions. This was probably not intended by the Legislature, inasmuch as under the Article as it originally stood fee was payable on certificates for less than Rs. 1,000 and the intention of the amendment was presumably only to exempt inheritances less than Rs. 1,000 and not to exempt extensions which together with the original amount make the value of the inheritance exceed Rs. 1,000. The position is now made clear by the new Article substituted by Bengal Act XI of 1935 and the view taken in the above 60 Cal. case is given legislative sanction.

**The amount or value of any debt specified in the certificate.**—The retention of the word “any” in the amended Art. in Madras is not happy. The use of the expression “any debt” may connote a single debt and not all the debts specified in the certificate. If any one of the debts in the original certificate exceeds and the other or others do not exceed the limit specified, then the words “any debt,” may give room to a contention that court fee is chargeable at different rates on “such amount”, i.e., on the amount of each debt. Suppose there are two debts in the original certificate, viz., Rs. 2,000 and Rs. 6,000. On a superficial view of the Article, court-fee appears to be chargeable on Rs. 2,000 at 2 per cent and on Rs. 6,000 at 3 per cent, since the former does not exceed and the latter exceeds the limit Rs. 5,000 specified. But this construction is of course not tenable in view of the words in the third column of the Article that on extensions  $4\frac{1}{2}$  per cent or 3 per cent is chargeable according as the original amount exceeded Rs. 5,000 or not. In the illustration taken above, suppose an extension is asked for subsequently for Rs. 1,000. Is court-fee to be calculated on the Rs. 1,000 at  $4\frac{1}{2}$  per cent or 3 per cent? It can be argued that since “the amount of any debt” in the original certificate exceeded Rs. 5,000, court-fee is chargeable on the extension at  $4\frac{1}{2}$  per cent. It can equally well be argued that since the amount of the other debt was only Rs. 2,000, the extension is chargeable only at 3 per cent. A contention which leads to such contradictory conclusions cannot be accepted. It is a well-established principle of interpretation of statutes that a construction leading to absurdity must be avoided. “Any debt” in the Article must thus mean the totality of the debts and not any one single debt in the original certificate and court-fee would be chargeable on the total Rs. 8,000 at 3 per cent and on the Rs. 1,000 at  $4\frac{1}{2}$  per cent. However, instead of “any debt,” the expression “the debt” which has no such distinctive singular flavour about it, would have been preferable, and the provision in the General Clauses Act that unless there is anything repugnant in the subject or context words in the singular shall include the plural would easily apply.

But the Lucknow High Court has recently held that the words "the amount or value of any debt or security" do not refer to anything except individual debts and individual securities and that therefore, amount payable in respect of an application for a succession certificate is to be calculated according to the amounts of the individual items comprised in the application and not according to the total amount of those items. *Pirthivi Nath Bhargawa v. Estate of Late Trilok Nath Bhargawa*, 151 I. C. 262=11 O. W. N. 1079=1934 Oudh 414. However as observed above, the difficulty would arise, if this view is accepted, in assessing the duty payable where the grant is extended. The Bengal amendment steers clear of this difficulty by specifically laying down that the aggregate amount or value of the debts or securities specified in the certificate and of those to which the certificate has been extended governs the rate for further extensions.

**Amount of debt**—This includes interest on the debt also on the date on which the inclusion of the debt in the certificate is applied for. See Note (1) to the Article.

**Value of the security**.—It is market-value on the day on which the inclusion of the security in the certificate is applied for. See Note (2) to the Article.

**Fee to be levied**.—The duty is two per cent on the amount or value of the debt when a certificate is first applied but a higher duty of three per cent is levied in the case of extension of certificates. When a portion of debt alone remains due, and a certificate is applied for to collect same, fee is payable only with respect to the value of the debt as put in the application. *Alihan v. Puttan Bibi*, 19 A. 129.

**Successive devolution of estate**.—Where a person obtained a succession certificate to collect a certain debt due to the deceased but the certificate holder himself died without collecting the debt and the heir of the estate of the deceased next in the chain applied for such certificate, a fresh fee has to be paid. The payment of duty by the prior holder of the estate could not enure to the benefit of the later heir. *In re Sorojebashini Devi*, 20 C. W. N. 1125=36 I. C. 125.

**Mode of collecting court-fees on certificate**.—S. 379 of the Indian Succession Act corresponding to s. 14 of the Succession Certificate Act runs as follows :—

"(1) "Every application for a certificate or further extension of a certificate shall be accompanied by a deposit of a sum equal to the fee payable under the Court Fees Act 1870 in respect of the certificate or extension applied for.

(2) If the application is allowed, the sum deposited by the applicant shall be expended, under the direction of the Judge, in the purchase of the stamp to be used for denoting the fee payable as aforesaid.

(3) Any sum received under sub-section (1) and not expended under sub-section (2) shall be refunded to the person who deposited it." Regarding estate of persons who died in the war, see Remissions allowed by the Local Governments cited in Appendix.

## Article 12-A

Certificate under the Regulation of the Bombay Code No. VIII of 1927.

(1) As regards debts and securities.

The same fee as would be payable in respect of a certificate under the Succession Certificate Act 1889, or in respect of an extension of such a certificate, as the case may be, and

(2) As regards other property in respect of which the certificate is granted

when the amount or value of such property exceeds one thousand rupees, but does not exceed ten thousand rupees;

Two per cent on so much of the amount or value.

when such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees,

Two and half per centum on such amount or value.

when such amount or value exceeds fifty thousand rupees.

Three per centum on such amount or value.

### COMMENTARY.

This Article was added by Act VII of 1889 and columns 2 and 3 thereof later on substituted by Act VII of 1910. This Article evidently applies to the Bombay Presidency and has been simplified by the new Article substituted therefor by the Local Act, Bombay Act II of 1932. See Appendix.

See also commentaries under Art. 12 *supra* under headings "Section 13 of the Succession Certificate Act" and "No exemption of fee in the grant of succession certificates."

## Article 13.

Application to the High Court of Judicature at Lahore] for the exercise of its jurisdiction under s. 44 of the Punjab Courts Act, 1916 [or to the Court of the Financial Commissioner of the Punjab for the exercise of its revisional jurisdiction under s. 84 of the Punjab Tenancy Act, 1887].

When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees.

Two rupees.

When such amount or value exceeds twenty-five rupees.

The fee leviable on a memorandum of appeal.

## COMMENTARY.

**Amendments.**—This article was inserted by the Punjab Courts Act, 1884 (18 of 1884,) s. 71, as amended by the Punjab Courts Act, 1899 (25 of 1899), s. 6, Punjab and N. W. Code. The words “or to the court of the Financial Commissioner \* \* \* of the Punjab Tenancy Act 1887” were added by s. 1 of the Court-Fees Amendment Act 1900 (IX of 1900). This section was repealed by the Punjab Courts (Amendment) Act 1912 in so far as it affected the Punjab and was re-enacted by s. 6 of the Punjab Act VII of 1922 as amended. The several verbal amendments that have been made to the Article are set out in s. 6 of the Punjab Act VII of 1922 printed in Appendix and they have been incorporated in the Article. The expression “High Court of Judicature at Lahore” are substituted for the words “Chief Court in the Punjab” by reason of Punjab Act XVIII of 1919.

**N. W. Frontier Province.**—Similar fees are payable on the like applications to the Court of the Judicial Commissioner of the N. W. Frontier Province, *see* s. 85 (1) of the N. W. Frontier Province Law and Justice Regulation, 1901 (7 of 1901) Punjab and N. W. Code.

**Revision Petitions.**—Applications in revision to the High Court are governed in Punjab by Art. 13, Sch. I, according to which the court-fee payable is Rs. 2 when the amount or value of the subject-matter does not exceed Rs. 25 and when such amount or value exceeds Rs. 25, the fee payable is the same as on a memorandum of appeal. An appeal against an order filing or refusing to file an award in an arbitration proceeding without the intervention of the court, falls under Sch. II, Art 11, as it is not an appeal against a decree, and is liable to a court-fee of Rs. 4 under that Article as amended in Punjab. Hence an application for revision against an order of the lower appellate court in such a case is also chargeable to the same court fee. *Kanhaya Lal Sita Ram v. Daulat Ram Naubat Rai*, 1929 Lah. 367 = 110 I. C. 302.

An order refusing an application to set aside an award when the reference is in a suit pending before court, is not appealable but such an order is analogous to an order filing an award under Cl. 21 of Sch. II, C. P. C. an appeal against which is provided for under s. 104 (f) C. P. C. and is chargeable to Rs. 4 only under Sch. II, Art. 11. An application for revision against such an order is therefore chargeable to Rs. 4 only. *Harbajan Singh v. Kalu Mal* 1929 Lah. 369 = 111 I. C. 145, dissenting from *Narpat Rai v. Devi Das*, 13 P. W. R. 1911 = 4 P. L. R. 1911 = 9 I. C. 388. But in an earlier case, *J. A. Mathews v. Messrs. Singleton Benda & Co.*, 108 I. C. 382, it has been held that in an application for revision against an order rejecting objections to an award, *ad valorem* court-fee is payable on the amount of the decree based on the award, where it exceeds Rs. 25. When the subject-matter of the dispute exceeds Rs. 25, the fact that no decree was passed at the date of the application for revision would not affect the question of court-fee. *Narpat Rai v. Devi Das*, 13 P. W. R. 1911 = 4 P. L. R. 1911 = 9 I. C. 388.

## Article 14.

Application to the High Court of Judicature at Rangoon for the exercise of its revisional jurisdiction under section 115 of the Code of Civil Procedure or section 25 of the Provincial Small Causes Courts Act, 1887 or section 25 of the Rangoon Small Cause Court Act, 1920.	When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees.	Two rupees.
	When such amount or value exceeds twenty-five rupees.	The fee leviable on a memorandum of appeal.

## COMMENTARY.

See s. 85 of the Lower Burma Courts Act, 1889 (XI of 1889) and the Lower Burma Courts Act, 1900 (VI of 1900), s. 47, Sch. 1.

By Letters Patent dated 11th November 1922, a High Court was established for those portions of the Province of Burma that were within the limits of the jurisdiction of the Chief Court of Lower Burma, and of the Judicial Commissioner thereof and the Judicial Commissioner of the Upper Burma.

The words "High Court of Judicature at Rangoon" were substituted for the words "Chief Court of Lower Burma" by Act XI of 1923. The words "Section 115 of the Code of Civil Procedure" were substituted for the words "Section 622 of the Code of Civil Procedure" by virtue of Section 158, of the present Code of Civil Procedure. The words "or section 25 of the Rangoon Small Cause Court Act, 1920" were inserted by Burma Courts Amendment Act, 1926 (Bur. Act. III of 1926.)

**Provincial Small Causes Courts Act.**—Section 25 of the Act provides for the revision of decrees and orders of Small Cause Court. It runs as follows "The High Court for the purpose of satisfying itself that a decree or order made in any case decided by a Court of Small Causes was according to law, may call for the case and pass such order with respect thereto as it thinks fit."

**Article 15**—Repealed by the Repealing and Amending Act, 1923 (Act XI of 1923) sec. 3 and Sch. II. It originally ran as follows :

<i>Application to the Court of the Judicial Commissioner, Upper Burma, for the exercise of its revisional jurisdiction under s. 115 of the Code of Civil Procedure or s. 25 of the Provincial Small Causes Courts Act, 1887.</i>	When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees.	Two rupees.
	When such amount or value exceeds twenty-five rupees.	The fee leviable on a memorandum of appeal.

## COMMENTARY.

The article was inserted in the first schedule to this Act in its application to Upper Burma, *see* the Upper Burma Civil Courts Regulation, 1896 (I of 1896), s. 36.

The words "or s. 14 of the Upper Burma Civil Courts Regulation, 1896," were repealed by the Upper Burma Civil Courts (Amendment) Regulation, 1903 (V of 1903), s. 4.

Section 115 has been substituted for s. 622 of the Code of Civil Procedure.

**Table of rates of ad valorem fees leviable on the institution of suits.**

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
...	5	0 6	140	150	11 4
5	10	0 12	150	160	12 0
10	15	1 2	160	170	12 12
15	20	1 8	170	180	13 8
20	25	1 14	180	190	14 4
25	30	2 4	190	200	15 0
30	35	2 10	200	210	15 12
35	40	3 0	210	220	16 8
40	45	3 6	220	230	17 4
45	50	3 12	230	240	18 0
50	55	4 2	240	250	18 12
55	60	4 8	250	260	19 8
60	65	4 14	260	270	20 4
65	70	5 4	270	280	21 0
70	75	5 10	280	290	21 12
75	80	6 0	290	300	22 8
80	85	6 6	300	310	23 4
85	90	6 12	310	320	24 0
90	95	7 2	320	330	24 12
95	100	7 8	330	340	25 8
100	110	8 4	340	350	26 4
110	120	9 0	350	360	27 0
120	130	9 12	360	370	27 12
130	140	10 8	370	380	28 8



When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
380	390	29 4	770	780	58 8
390	400	30 0	780	790	59 4
400	410	30 12	790	800	60 0
410	420	31 8	800	810	60 12
420	430	32 4	810	820	61 8
430	44	33 0	820	830	62 4
440	450	33 12	830	840	63 0
450	460	34 8	840	850	63 12
460	470	35 4	850	860	64 8
470	480	36 0	860	870	65 4
480	490	36 12	870	880	66 0
490	500	37 8	880	890	66 12
500	510	38 4	890	900	67 8
510	520	39 0	900	910	68 4
520	530	39 12	910	920	69 0
530	540	40 8	920	930	69 12
540	550	41 4	930	940	70 8
550	560	42 0	940	950	71 4
560	570	42 12	950	960	72 0
570	580	43 8	960	970	72 12
580	590	44 4	970	980	73 8
590	600	45 0	980	990	74 4
600	610	45 12	990	1,000	75 0
610	620	46 8	1,000	1,100	80 0
620	630	47 4	1,100	1,200	85 0
630	640	48 0	1,200	1,300	90 0
640	650	48 12	1,300	1,400	95 0
650	660	49 8	1,400	1,500	100 0
660	670	50 4	1,500	1,600	105 0
670	680	51 0	1,600	1,700	110 0
680	690	51 12	1,700	1,800	115 0
690	700	52 8	1,800	1,900	120 0
700	710	53 4	1,900	2,000	125 0
710	720	54 0	2,000	2,100	130 0
720	730	54 12	2,100	2,200	135 0
730	740	55 8	2,200	2,300	140 0
740	750	56 4	2,300	2,400	145 0
750	760	57 0	2,400	2,500	150 0
760	770	57 12	2,500	2,600	155 0

When the amount or value of the subject-matter exceeds—		But does not exceed—	Proper Fee	When the amount or value of the subject-matter exceeds—		But does not exceed—	Proper Fee.
Rs.	Rs.	Rs.	A.	Rs.	Rs.	Rs.	A.
2,600	2,700	160	0	8,750	9,000	435	0
2,700	2,800	165	0	9,000	9,250	445	0
2,800	2,900	170	0	9,250	9,500	455	0
2,900	3,000	175	0	9,500	9,750	465	0
3,000	3,100	180	0	9,750	10,000	475	0
3,100	3,200	185	0	10,000	10,500	490	0
3,200	3,300	190	0	10,500	11,000	505	0
3,300	3,400	195	0	11,000	11,500	520	0
3,400	3,500	200	0	11,500	12,000	535	0
3,500	3,600	205	0	12,000	12,500	550	0
3,600	3,700	210	0	12,500	13,000	565	0
3,700	3,800	215	0	13,000	13,500	580	0
3,800	3,900	220	0	13,500	14,000	595	0
3,900	4,000	225	0	14,000	14,500	610	0
4,000	4,100	230	0	14,500	15,000	625	0
4,100	4,200	235	0	15,000	15,500	640	0
4,200	4,300	240	0	15,500	16,000	655	0
4,300	4,400	245	0	16,000	16,500	670	0
4,400	4,500	250	0	16,500	17,000	685	0
4,500	4,600	255	0	17,000	17,500	700	0
4,600	4,700	260	0	17,500	18,000	715	0
4,700	4,800	265	0	18,000	18,500	730	0
4,800	4,900	270	0	18,500	19,000	745	0
4,900	5,000	275	0	19,000	19,500	760	0
5,000	5,250	285	0	19,500	20,000	775	0
5,250	5,500	295	0	20,000	21,000	795	0
5,500	5,750	305	0	21,000	22,000	815	0
5,750	6,000	315	0	22,000	23,000	835	0
6,000	6,250	325	0	23,000	24,000	855	0
6,250	6,500	335	0	24,000	25,000	875	0
6,500	6,750	345	0	25,000	26,000	895	0
6,750	7,000	355	0	26,000	27,000	915	0
7,000	7,250	365	0	27,000	28,000	935	0
7,250	7,500	375	0	28,000	29,000	955	0
7,500	7,750	385	0	29,000	30,000	975	0
7,750	8,000	395	0	30,000	32,000	995	0
8,000	8,250	405	0	32,000	34,000	1,015	0
8,250	8,500	415	0	34,000	36,000	1,035	0
8,500	8,750	425	0	36,000	38,000	1,055	0

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
38,000	40,000	1,075 0	2,20,000	2,25,000	2,050 0
40,000	42,000	1,095 0	2,25,000	2,30,000	2,075 0
42,000	44,000	1,115 0	2,30,000	2,35,000	2,100 0
44,000	46,000	1,135 0	2,35,000	2,40,000	2,125 0
46,000	48,000	1,155 0	2,40,000	2,45,000	2,150 0
48,000	50,000	1,175 0	2,45,000	2,50,000	2,175 0
50,000	55,000	1,200 0	2,50,000	2,55,000	2,200 0
55,000	60,000	1,225 0	2,55,000	2,60,000	2,225 0
60,000	65,000	1,250 0	2,60,000	2,65,000	2,250 0
65,000	70,000	1,275 0	2,65,000	2,70,000	2,275 0
70,000	75,000	1,300 0	2,70,000	2,75,000	2,300 0
75,000	80,000	1,325 0	2,75,000	2,80,000	2,325 0
80,000	85,000	1,350 0	2,80,000	2,85,000	2,350 0
85,000	90,000	1,375 0	2,85,000	2,90,000	2,375 0
90,000	95,000	1,400 0	2,90,000	2,95,000	2,400 0
95,000	1,00,000	1,425 0	2,95,000	3,00,000	2,425 0
1,00,000	1,05,000	1,450 0	3,00,000	3,05,000	2,450 0
1,05,000	1,10,000	1,475 0	3,05,000	3,10,000	2,475 0
1,10,000	1,15,000	1,500 0	3,10,000	3,15,000	2,500 0
1,15,000	1,20,000	1,525 0	3,15,000	3,20,000	2,525 0
1,20,000	1,25,000	1,550 0	3,20,000	3,25,000	2,550 0
1,25,000	1,30,000	1,575 0	3,25,000	3,30,000	2,575 0
1,30,000	1,35,000	1,600 0	3,30,000	3,35,000	2,600 0
1,35,000	1,40,000	1,625 0	3,35,000	3,40,000	2,625 0
1,40,000	1,45,000	1,650 0	3,40,000	3,45,000	2,650 0
1,45,000	1,50,000	1,675 0	3,45,000	3,50,000	2,675 0
1,50,000	1,55,000	1,700 0	3,50,000	3,55,000	2,700 0
1,55,000	1,60,000	1,725 0	3,55,000	3,60,000	2,725 0
1,60,000	1,65,000	1,750 0	3,60,000	3,65,000	2,750 0
1,65,000	1,70,000	1,775 0	3,65,000	3,70,000	2,775 0
1,70,000	1,75,000	1,800 0	3,70,000	3,75,000	2,800 0
1,75,000	1,80,000	1,825 0	3,75,000	3,80,000	2,825 0
1,80,000	1,85,000	1,850 0	3,80,000	3,85,000	2,850 0
1,85,000	1,90,000	1,875 0	3,85,000	3,90,000	2,875 0
1,90,000	1,95,000	1,900 0	3,90,000	3,95,000	2,900 0
1,95,000	2,00,000	1,925 0	3,95,000	4,00,000	2,925 0
2,00,000	2,05,000	1,950 0	4,00,000	4,05,000	2,950 0
2,05,000	2,10,000	1,975 0	4,05,000	4,10,000	2,975 0
2,10,000	2,15,000	2,000 0	4,10,000	...	3,000 0
2,15,000	2,20,000	2,025 0			

# SCHEDULE II. FIXED-FEES.

## Article 1.

Number.		Proper Fee.				
		Main Act.	Provincial Amendments.			
		Bengal.	Bihar and Orissa.	Bombay.	Madras.	Punjab.
1. Application or petition.	(a)--When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings ;	Two annas.	Two annas.	Two annas.	One anna.	Two annas.
	or when presented to any officer of land revenue by any person holding temporarily-settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement ;	do	do	do	Two annas.	do
	or when presented to any Municipal Commissioner [or member of a District Board--Beng.] under any Act for the time being in force for the conservancy or improvement of any					

place, if the application or petition relates solely to such conservancy or improvement;	do	do	do	do	do	do	do
or when presented to any Civil Court other than a principal Civil Court of original jurisdiction. * *	do	do	do	do	do	do	do
* * or to any court of Small Causes constituted under Act No. XI of 1865 or under Act No. XVI of 1868, s. 20 or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees. [ <i>not being an application for assistance under s. 86 of the Bombay Land Revenue Code, 1879</i> —added in Bombay.]	do	do	do	do	do	do	do
or when presented to any Civil, Criminal or Revenue Court or to any Board or executive officer for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court, Board or officer, or of any other document on record in such Court or Office.	do	do	do	do	do	do	do

Number.	Proper Fee.						
	Main Act.	Provincial Amendments.					
		Bengal.	Bihar and Orissa.	Bombay.	Madras.	Punjab.	United Provinces.
1. Application or petition for assistance under section 86 of the Bombay Land Revenue Code, 1879—added in Bombay.]				Four annas			
[(a) When presented to a Collector or other Officer of Revenue for assistance under section 86 of the Bombay Land Revenue Code, 1879—added in Bombay.]					In the case of a criminal complaint one Rupee and in other cases		
(b)—When containing a complaint or charge of any offence other than an offence for which police officers may, under the Criminal Procedure Code, arrest without warrant, and presented to any criminal court;	Eight annas.	Twelve annas.	Eight annas.	Twelve annas	One Rupee.	Twelve annas.	
or when presented to a Civil, Criminal or Revenue Court, or to a Collector, or any Revenue-officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act;	do	do	do	do	do	do	do



Number.	Proper Fee.						
	Main Act.	Bengal.	Bihar and Orissa.	Bombay.	Madras.	Punjab.	United Provinces.
1. Application or petition -- (Continued)		exceed Rs. 1000, 5 Rs.			does not exceed Rs. 1000, 5 Rs.	for taking some other judicial action Rs 5.	Companies Act, 1913 for winding up a company 50 Rs.
		(b) when the value of the suit exceeds Rs. 1000 ; 10 Rs.			(b) when the value of the suit or proceeding exceeds Rs 1000, 10 Rs.	(iii) in all other cases Rs. 2,	(2) under s. 115, C.P.C. for revision of an order 4 Rs.
		(ii) when presented to the High Court otherwise than under that section, 2 Rs.			(ii) when presented to a High Court otherwise than under that section, 2 Rs.		(3) In any other case, 3 Rs.



## COMMENTARY.

**Legislative References.**—Act XI of 1865—See now the Provincial Small Causes Court- Act, 1887 (IX of 1887).

Act XVI of 1865—See now the Bengal N. W. P. and Assam Civil Courts Act, 1887 (XII of 1887).

**Local Amendments.**—This Article has been amended in Bengal, Bihar and Orissa, Bombay, Central Provinces, Madras, Punjab, and the United Provinces. For facility of reference the amendments that have been made have been set out in a tabular form in the text of Art. 1 *supra* except in Central Provinces where the Article is recast and hence is set out below separately. The Local Acts themselves are reproduced in Appendix. Almost all the local legislatures have increased the fees except in stray cases where the fee prescribed by the main Act is left unaltered.

**Central Provinces.**—In the third column, for the words 'one anna' opposite clause (a), the words two annas have been substituted.

For clause (b) in the second column and the entry opposite to it in the third column, the following clause and entries have been substituted, namely:—

(b) When containing a complaint or charge of any offence other than an offence for which police officers may, under the Code of Criminal Procedure, 1898, arrest without warrant, and presented to any Criminal Court;	Twelve annas.
or for orders of arrest or attachment before judgment or for temporary injunctions;	Two rupees.
or for compensation for arrest or attachment before judgment or in respect of a temporary injunction obtained on insufficient grounds;	Two rupees.
or for the appointment of a receiver in a case in which the applicant has no present right of possession of the properties in dispute;	Five rupees.
or for setting aside decrees passed <i>ex parte</i> and for review of orders dismissing suits for default;	Twelve annas.

or when presented to a Civil, Criminal or Revenue Court, or to a Collector, or any Revenue Officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act ;	Twelve annas.
or to deposit in Court revenue or rent ;	Eight annas.
or for determination by a Court of the amount of compensation to be paid by landlord to his tenant.	Eight annas.

For clauses (c) and (d) in the second column and for the entries in the third column opposite these clauses, the following clauses and entries have been substituted, namely :—

(c) When presented to a Commissioner of Revenue or to any Chief Officer charged with the executive administration of a division, and not otherwise provided for by this Act.	One rupee and eight annas.
(d) When presented to a Chief Controlling Revenue Authority or Executive Authority and not otherwise provided for by this Act.	Two rupees.
(e) When presented to the Court of the Judicial Commissioner—	
(i) otherwise than under section 25 of the Provincial Small Causes Courts Act, 1887, or section 115 of the Code of Civil Procedure, 1908 ;	Two rupees.
(ii) under section 25 of the Provincial Small Causes Courts Act, 1887 ;	Five rupees.
(iii) under sec. 115 of the Code of Civil Procedure, 1908 ;	Five rupees.

**Scope of the Schedule.**—This schedule deals with cases where a fixed fee is prescribed. Schedule I deals with *ad valorem* fees and deals with cases where a money value could be put on the subject-matter while in this schedule the subject-matter is either not

capable of valuation or the nature of the proceedings is such that it was thought sufficient to levy a comparatively light fixed court-fee irrespective of the intrinsic value of the property to which the application or petition might relate.

**Application or petition.**—Sch. I Art. 1 deals with complaints and written statements containing a counter claim or set off or memorandum of Appeal or of cross objection. It therefore relates to suits and appeals. This Article in Sch. II deals with petitions and applications as contra-distinguished from them when presented to the several authorities set out in column 2 of the Article.

**Applications falling within this Article.**—Only such Applications as are not otherwise provided for in any of the succeeding articles fall under this Article.

1. **Guardianship application.**—*Anonymous* 6 P. R. 1873.

2. **Arms Act.**—Application for issue of license to have fire arms. The court-fee leviable is one anna. *Vide* Appendix Reductions and Remissions.

3. **Copy application.**—Application for the grant of copies should be stamped with 2 annas in almost all the Provinces. Paragraph 5 of Art. 1 (a) covers an application to an Assistant Commissioner of Income-tax for a copy of an order passed by him and a court-fee of two annas should be paid for the application. *Basant Lal Ranjidas v. Commissioner of Income-tax, Bihar and Orissa*, 11 Pat. 40 = 136 I. C. 302 = 1932 Pat. 103.

4. **Award.**—Application to file an award under R. 20, Sch. II, C.P. C. *Bijadhar v. Manchar*, 10 Cal. 11; *Lala Dharan Das v. Ajudhia Prasad*, 20 P. R. 1881.

5. **Objections to an award** are also treated as petitions. *Adamali v. Abdul Ali*. 1928 Sind 87 = 107 I. C. 223, as there is no mention of this specifically along with written statements in the list of exemptions in s. 19 of the Act.

6. **Application for the issue of a probate** of a will or Letters of Administration is treated as an ordinary petition and such applications are to be stamped under this Article. *In the matter of Judoonate Sadhoo Khan*, 15 W. R. 40. Similarly appeals against the grant of probate were held to be chargeable only as petitions for probate under this Article. *Rodrigue v. Mathias*, 21 M. L. J. 481. But this decision is opposed to some previous bench decisions of the court and cannot also be otherwise supported. For further comments see under Sch. II, Art. 11, under heading "Indian Succession Act". In *Miss Eve Mountstephans v. Mr. Hunter Garnet*, 35 A. 448, Art. 17 (VI) was held to apply to such appeals, which appears to be the correct view.

7. **A petition containing a compromise agreement** into which the parties have entered, and praying for a decree in terms of the compromise. *Reference under the Stamp Act*, (1884) 8 M. 15; *Ram Saran v. Emperor*, 40 All. 19.

**8. Application for restoration of appeal.**—An application for restoration of an appeal dismissed for default in payment of paper book costs is not an application for review either under O. 47, r. 1, C. P. C. or under Art. 4 or 5 of Sch. I of the Court-Fees Act. It is sufficient if it is stamped with a court-fee stamp of Rs. 2 only under Art. 1 (d) of Sch. II. *Nalini Sundari Debya v. Narendra*, 36 C. W. N. 246=1932 Cal. 641. See also *Hari Dassi Debi v. Sajani Mohan Batabayal*, 59 Cal. 1334=138 I. C. 393=36 C. W. N. 564=1932 Cal. 776, where the application was to restore an appeal dismissed for default of payment of initial deposit.

**9. Cross-objections regarding costs** A memorandum of cross-objections relating to costs only does not fall either within Sch. I Act. 1 or Sch. II Art. 11 or 17 (6) but may be treated as a petition under Art. 1 (d) Sch. II. *Kamal Kamini Devi v. Rangpur North Bengal Bank Ltd.*, 25 C. W. N. 934=1921 Cal. 55. But see under Sch. I, Art. 1.

**10. Petition under Trusts Act.** On petitions under Ss. 34 and 74, Trusts Act, court-fees under Sch. II, Art. 1 (d) are sufficient. *Mahomed Sadiq Ali Khan v. Kazim Ali Khan*, 11 O. W. N. 323=150 I. C. 193=1934 Oudh 118.

### Applications for which no fee need be paid.

**1. Memorandum of objections** to a finding submitted by a lower court under O. 41, r. 26, C. P. C. It is not a petition but a mere statement. It does not require any stamp. *Damodar Prasad v. Masudan Singh*, 105 I. C. 108 (Pat.); *Mahomed Salimullah Khan v. Khalil-ur-Rahman Khan*, 54 All. 465=140 I. C. 47=1932 All. 526.

**2. Compromise agreement** need not be separately stamped under the Stamp Act, if it is contained in the application presented to court, which will have to be stamped as any other application. *Ram Saran Lal v. Emperor*, 40 A. 19. See also *Reference under Stamp Act*, 8 M. 15 (F. B.)

**3. Applications for refund of excess court-fee paid nderu mistake.** See *Bhikoo v. Rash*, 9 W. R. 357. But it has to be noticed that it is not obligatory on the part of the court to order refund. It is only in cases where it remands a suit under s. 13 that the court is bound to refund. Except in those cases it appears that where the excess fee has been paid only by the negligence of the parties there is no justification for the application for refund being exempt from stamp duty. As a matter of fact this question arose in specific instances in the High Court and the Government of Madras has issued the following G. O. exempting the court-fee in the case of refund applications—Notification No. 358 dated 10th September 1921. It runs thus :—

“The existing item 3 will be renumbered as 3 (a) and the following is added in the list of Reductions and Remissions *vide* appendix.”

(b) To remit fees now chargeable under Art. 1 (d) (ii) of Schedule II of the Madras Court-Fees (Amendment) Act, 1922 (V of 1922), on applications or petitions presented to the High Court for refund of court-fees paid under a mistake or by misdirection.

(B. P. R. No. 42, Mis., 7th February 1927).

But it will be noticed that the exemption applies only to the case of the High Court, and that such applications presented to the Mofussil courts must bear a court fee stamp. It may not be just that there should be such a distinction but it is for the proper authorities to take necessary action as explained in G. O. to exempt such applications in Mofussil also.

**Revision.**—Revision petition is only like other petitions and when filed in the High Court is generally charged with a two rupees fee in Madras, Bengal and in the Punjab with certain exceptions and in the Provinces of Bihar and Orissa and Bombay, a fee of Rs. 3 is charged. In Madras, Bengal, Central Provinces and United Provinces, a petition under s. 115, C. P. C. is specially provided for.

In Bengal and Madras, the court-fee payable on revision petition under s. 115, C. P. Code varies with the value of the suit in relation to which the order under revision was passed. The language of the Article in Madras presents here some difficulty. While in Bengal, the words used are simply "the value of the suit to which the order relates," the language used in Madras is "value of the suit or proceeding to which the order relates." Does it mean that court-fee is to be collected according to the value of the interlocutory proceeding in which the order sought to be revised was passed? In most cases, it is not possible to assess the value of an interlocutory proceeding. Even in cases where such value may be estimated, it does not seem to be the correct basis for computation of court-fee because the language is "proceeding to which the order relates" and not proceeding in which the order is passed." It clearly means the main proceeding in relation to which the interlocutory order was passed. The words "or proceeding" seem to have been inserted so as to provide for revision petitions against orders passed in proceedings under certain special enactments which are initiated by original petitions and cannot be classed as suits. If in such proceedings, no revision is provided for under the special Act, the general provision in s. 115 C. P. C. may have to be resorted to and then the fee may have to be computed on the value of such proceeding.

**Revision in proceedings under s. 476, Criminal Procedure Code.**—In Bengal, Madras, Central Provinces and United Provinces, there is difference in the court-fees to be charged on revision petitions under s. 115, Civil Procedure Code and other revision petitions. In the case of revision against orders of civil or revenue courts in proceedings under s. 476 etc., the question would arise whether such orders are revisable under s. 115 Civil Procedure Code or under

s. 439 Criminal Procedure Code. The preponderance of judicial authorities seems to be that s. 439 of the Criminal Procedure Code has no application to the case and that the High Court can exercise its revisional powers under s. 115, Civil Procedure Code. See 35 C. W. N. 775 = 1931 Cal. 604; 34 C. W. N. 914 = 52 C. L. J. 87; 135 I. C. 513 following 40 C. 477; 38 All. 695; 1926 All. 577; 49 All. 536; 1927 Oudh 14; 1935 Oudh 59; 17 M. L. T. 268 = 27 I. C. 994; 28 Cr. L. J. 16 = 99 I. C. 48; 31 M. L. J. 440. The practice in the Calcutta High Court seems to be to entertain such revision petitions on the civil side, under s. 115, Civil Procedure Code, though they would be heard by the Bench taking up criminal work. See 51 C. L. J. 45 following 40 Cal. 477 (F. B.) In Madras also the practice has been to entertain such revision petitions on the civil side under s. 115, Civil Procedure Code see 31 M. L. J. 440. Rule 37 of Criminal Rules of Practice, 1931 is in conformity with this and the recent Full Bench decision in 57 M. 177 = 65 M. L. J. 873 = 38 L. W. 940 does not affect the question though it contains some observations that such proceedings are more of a criminal nature. It follows therefore that when the subject-matter of the suit in relation to which the order is passed exceeds Rs. 1,000, a court fee of Rs. 10 and in other cases a court fee of Rs. 5 should be paid on such revision petitions.

### Article 1-A.

Number.	...	Proper fee.
Application to any Civil Court that records may be called for from another Court.	When the Court grants the application and is of opinion that the transmission involves the use of the post.	Twelve annas in addition to any fee levied on the application under clause (a), clause (b) or clause (d) of Art. 1 of this Schedule. [One rupee in Bihar and Orissa. One rupee two annas in United Provinces.]

### COMMENTARY.

This article was inserted by Act XIV of 1911.

**Local amendments.**—This article has been amended by the Bihar and Orissa Court Fees Amendment Act I of 1922 and by the United Provinces Act III of 1932, and the additional fee has been raised to Rupee one and Rupee one and annas two respectively, instead of 12 annas as in the main Act.

**Madras.**—Rule 78 of the C. R. P. and C. O. of the High Court of Madras provides as follows "If a record (not falling within the

provisions of Art. 1-A. of Sch. II of the Court-Fees Act 1870) or document is required to be sent by post, the court may direct the applicant to deposit in court a sum sufficient to repay the postage of the same to and from the court. Unless the court otherwise orders, the cost of, and incidental to an application for production of records which are material and relevant to the case, or which are sent for by the court of its own accord, shall be costs in the case."

The High Court has also issued the following circular "The attention of all civil courts is drawn to the Court-Fees Amendment Act 1911, under which a fee of 12 Annas (to be collected in Stamps) is to be levied on every application made under O XIII, r. 10, Sch. I of the Civil Procedure Code, that records may be called for from another court, if the application is granted and the records are to be transmitted by post. This fee of 12 annas is a fixed fee in place of postage charges hitherto deposited in cash which should no longer be collected." H. C. Cir. R. O. C. No. 3085 dated 25th October 1911 H. C. Cir. Dis. No. 115 dated 12th January 1920.

### Article 2.

Application for leave to  
sue as a pauper.

...

Eight annas.

### Article 3.

Application for leave to  
appeal as a pauper.

(a) When presented to a Dis- One rupee.  
trict Court. [or a Sub-Court—  
Mad.]

(b) When presented to a Two rupees.  
Commissioner or a High  
Court.

### COMMENTARY.

**Pauper.**—A pauper is defined in the explanation to O. XXXIII, r. 1 of the Civil Procedure Code as follows: A person is a "pauper" when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or when no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing apparel and the subject-matter of the suit". To this definition an addition has been made in Bombay to the effect that in determining whether he is possessed of sufficient means the subject-matter of the suit shall be excluded.

**Pauper suits.**—The rules regulating pauper suits are set out in O. 33 of the Civil Procedure Code.

**Pauper appeals.**—See O. 44 of the Civil Procedure Code.

**Review application.**—There is an unreported decision of the Madras High Court where Curgenvén, J., has held that an application for review may be filed in *forma pauperis*. See under Sch. I. Arts. 4 and 5.

### Article 4

Plaint or memorandum of appeal in a suit to obtain possession under Act No. XVI of 1838, or the Mamlatdar's Courts Act, 1876.	...	Eight annas [One rupee in the Punjab.]
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#### COMMENTARY.

**Amendments.**—The words “the Mamlatdars’ Courts Act 1876” were substituted for the words “Bombay Act No. V of 1864” (to give Mamlatdars’ Courts jurisdiction in certain cases to maintain existing possession, or to restore possession to any party dispossessed otherwise than by course of Law), by the Repealing and Amending Act, 1891 (XII of 1891), General Acts, Vol. IV. This Article is omitted in Madras.

**Mamlatdars’ Courts Act.**—It is Bombay Act III of 1876. But see now the Bombay Mamlatdars’ Courts Act, 1906 (Bom. Act II of 1906).

### Article 5.

Plaint or memorandum of appeal [or of cross-objection—Bihar and Orissa] in a suit to establish or disprove a right of occupancy.	...	Eight annas [One rupee in the Punjab.] [Twelve annas in the United Provinces.]
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#### COMMENTARY.

**Amendments.**—This article has been amended in the Punjab and in the United Provinces for raising the fee, and the amendment has been noted above. In Bihar and Orissa, the Article has been amended so as to be applicable to memo of cross objections also.

**Section 7 (xi).**—That clause provides for suits between landlord and tenant to recover the occupancy of immoveable property from which a tenant has been illegally ejected by the landlord. The present Article applies on the other hand only to a suit or appeal to establish or disprove a right of occupancy. The former section refers only to a suit by the *tenant who has been ejected to recover his holding* while this Article refers to a suit or appeal by a landlord and tenant for the purpose of establishing or disproving a title to occupancy.



**Suit by landlord.**—Where a plaintiff filed a suit to eject a defendant treating him as a tenant at will, who however claimed a right of occupancy, it was held by the High Court of Calcutta that the real object of the plaintiff was to contest the claim of occupancy of the defendant and that this Article applied. *Bibi Nurjahan v. Morgan Munda*, 11 C. L. R. 91. It is doubtful as to how far this decision is correct. Of course s. 7 clause xi (d) may be in terms applicable for the reason that it refers to a suit by a tenant and this is a landlord's suit but how does this Article apply to such a suit at all? The suit is one for the recovery of possession of land from a person who is claiming it as an occupancy tenant. Whatever may be the contention of the defendant, the action of the plaintiff is plain and it is a suit for possession of land. How the character of the plaintiff's suit can change as per the complexion of the written statement of the defendant is not clear. It is submitted that to bring a suit within the four corners of this Article the suit must be simply one to establish or disprove a right of occupancy. If that be only one of the reliefs sought, and there are other reliefs to which this relief is only a step then the Article cannot apply. In a similar case, therefore when there was an appeal against decree directing ejectment and awarding mesne profits, it was held by the High Court of Madras that the court-fee should be calculated under s. 7 (v) and that this Article did not apply. *Brahmayya v. Lakshmi Narasimham*, 23 M 14.

**Agra Tenancy Act.**—In a suit under s. 95 of the Agra Tenancy Act 1901 to declare the plaintiff's status as an occupancy tenant, it was held that the court-fee was payable under this Article. *Ratan Singh v. Khem Karan*, 40 A. 358=44 I. C. 608.

## Article 6.

Bail-bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure 1882, or the Code of Civil Procedure 1908, and not otherwise provided for in the Act.

.....

Eight annas. [One rupee in Bombay.]

[Twelve annas in United Provinces.]

## COMMENTARY.

**Amendment.**—This article was substituted for the old Article 6 which contained the word "Bail bond or other instrument of obligation not otherwise provided for by this Act, when given by the direction of any court or executive authority" by the Probate and Administration Act, 1889 (VI of 1889) s. 18 (2).

*Code of Criminal Procedure, 1882.* Now the Code of 1898. The Article originally stood ending with the words "Code of Civil Procedure" and the succeeding words "1908 and not otherwise provided for by this Act" were added by Act VII of 1914.

**Court-fees and stamp duty.**—The stamp revenue is quite different from the court-fee revenue or judicial receipts and any instrument taxable under the Stamp Act is not thereby exempt from court-fee or *vice versa*. The Court-Fees Act and the Stamp Act are independent of each other. Instruments liable to court-fee are generally exempt from stamp duty. See Section 2 (21), Sch. I Arts. 15 and 24 of the Stamp Act. But there are cases where a dual fee has to be filed. See Sch. I Art. 57 of the Stamp Act. *Kakwanta v. Maha Bir Prasad*, 11 All. 16 (F. B.); *Reference from the Munsif, Hobe Ganj*, 53 Cal. 101; but such a dual fee may be exempted by a special provision. See Art. 15 of Schedule I of the Indian Stamp Act. In such cases, only the court-fee need be paid.

**Liability to Court-Fee.**—Article 15 of Sch. I of the Stamp Act excludes bonds provided for in the said Act and bonds liable to court-fee. But bonds under Article 40 or Article 57 of Sch. I of the said Act may be executed in pursuance of an order of a court under the Civil Procedure Code. If so they are chargeable both with the stamp duty and with court-fee. *Reference (1926)*, 53 Cal. 101. The Madras High Court has held that a mortgage deed executed by a Receiver to secure the execution of his office is liable to court-fee and to stamp duty. *Amirthammal v. Ramalinga Goundan*, 43 Mad. 363. It is true that the judgment referred to Article 40 but the court must have meant Article 57. Security bonds given for stay of execution of a decree under Order 41, Rule 5 or 6, and for costs of an appeal under Order 41, Rule 10, are mortgages and are liable both to court-fee and to stamp duty under Art. 40. In the case of a security bond under Order 41, Rule 6, the Oudh Court applied Article 57 instead of Article 40 on the ground that the transaction amounted to a contract between the court and the respondent and the security was for performance of that contract. *Lal Harihar Pratab v. Bisheshwar*, 107 I.C. 553. This was erroneous for the court is not a juridical person negotiating contract with parties. The court seems to have overlooked the case of *Reference (1926)* 53 Cal. 101 and the question of liability to court-fee was not even considered. (Extract from Mulla and Pratt's commentaries on the Indian Stamp Act).

**Bail-bond.**—Regarding bail and bail-bonds see chapter XXXIX of the Code of Criminal Procedure. Section 499 of the Code runs as follows :—

"Before any person is released on bail or released on his own bond, a bond for such a sum of money as the police officer or court, as the case may be, thinks sufficient shall be executed by such person when he is released on bail, by one or more sufficient sureties

conditioned that such person shall attend at the time and place mentioned in the bond and shall continue so to attend unless otherwise directed by the police-officer or court, as the case may be.

(2) If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other court to answer the charge.

For the Form of Bail-bond, see form 42 Sch. V of the Criminal Procedure Code.

### **Instrument of obligation.**

(i) **Criminal Courts.**—"Other instruments of obligation given in pursuance of an order made by a magistrate under any section of the Code of Criminal Procedure".

As to general provision as to bonds to be executed in Criminal cases see Chapter XLII of the Criminal Procedure Code.

Security to keep the peace for good behaviour see ss. 108 to 110. For Forms see X and XI of sch. V. For contents of the bonds see s. 121.

Release of accused person under certain circumstances, see s. 169. For Form, see Form No. XXV of Schedule V.

Bond for appearance of complainant and witnesses before a magistrate, see s. 170. For Form, see Form No. XXVI of Schedule V.

Bond for appearance of offender released pending realisation of fine, see s. 388. See Form No. 57 of Sch. V.

(ii) **Civil Courts.**—There are several cases in which such a bond or other instrument is taken by civil courts acting under the provisions of the Code of Civil Procedure or several other enactments. For instance, O. 38, r. 2, C. P. C. provides for security for appearance of a defendant arrested before judgment. O. 38, r. 5 provides for security for the production of property. O. 41 r. 6 provides for security bond to be given during the pendency of appeal, while O. 41, R 5 provides for a security bond to be given on order to stay execution of decree. O. 41, r. 10 provides for security for costs of appeal and so on. O. 40, r. 3 provides for a bond to be given by a Receiver. For the Forms see Appendices F and G to the First Schedule of the Civil Procedure Code.

(iii) **Other enactments.**—The Guardians and Wards Act provides for a bond being executed by the guardian of the property of a minor. See also r. 9, Ch. IV, Part II, Vol. I. C. R. P. and C. O. of the Madras High Court and Form No. 8 Appendix III E, Vol. II of the said publication.

The Indian Succession Act provides for the execution of a bond upon grant of succession certificate. Where Letters of Administra-

tion are granted, a bond has to be executed by the person in whose favour such an order is passed.

**Bond.**—It is defined in s. 2 (5) of the Stamp Act (Act II of 1899). It is mainly an instrument whereby a person obliges himself to pay money to another on condition that the obligation shall be void if a specific act is performed or is not performed as the case may be. Under the old Act I of 1879, there was no saving clause as is found in the later Act or the present Act in Art. 15. The words “or by the Court-Fees Act 1870” were added by the Amending Act III of 1889. The result of the amendment is that where a bond is executed and fee for same is provided for in the Court-Fees Act, no other fee in the shape of stamp duty is leviable thereon. That is where a bond is executed by order of court, the court-fee is leviable under Art. 6 of Sch. II and the document need not bear a non-judicial stamp in addition. It was held in *Kaivanta v. Maha Bir Prasad*, 11 All. 16 F. B., that where a bond is given under the orders of a court as security by one party for the sake of another, it is subject to two duties (a) an *ad valorem* stamp under the Stamp Act, Art. 15, Sch. I and (b) a Court-fee of eight annas under the Court-Fees Act Art. 6, Sch. II. Their Lordships relied on the analogy of an administration bond under the Stamp Act and also under the Court-Fees Act. But this decision cannot be correct in view of the saving clause in Art. 15 of the Stamp Act.

**Given in pursuance of the order of court.**—Is a bond executed by a party where a relief is granted by court conditional on his executing a bond, one *given in pursuance of the order of court* in view of the fact that the party is given the option of executing a bond. He has to do so only if he chose to have that relief on that condition. In *Gurandita Mal v. The Firm Guru Das Mal Ram Chand*, 7 Lah. L. J. 343 = 1925 Lah. 552, it was held that a security bond taken on an order for stay of execution must be stamped in accordance with the Stamp Act and cannot be written on plain paper bearing a court fee of eight annas. Martineau, J., observed thus, “The fallacy lies in supposing that the giving of the security bond is ordered by the court. The judgment-debtor is not obliged to furnish security, but he may, or may not furnish it, as he pleases so that the effect of O. 21, r. 26 (3), C. P. C. is that the court may before making an order for staying execution require security from the judgment-debtor and pass a conditional order. I cannot agree that the bond was written in pursuance of an order of court, for the court could not compel the judgment-debtor to furnish the security but it was optional with him to furnish it or not as he pleased. What the court has ordered was that execution should be stayed and the furnishing of security was really not part of its order but was the condition which it attached to the order.” And following the decision in *Dwaraka Nath v. Sailaja Kanta*, 43 I. C. 376, it was held that the bond was not properly stamped. But see *Muhammad Ewaz v. Haji Ghulam Ali*, 1929 Lah. 205 where the decision in 1925 Lah. 552 was

not followed and the Calcutta decision cited below was referred to with approval. In *Reference from the District Munsiff of the Court of Habi Ganj*, 53 C. 101. Walsley, J., observed as follows :—

"With all deference to the learned Judges, who decided the case of *Dwarkanath Dey v. Santaja Kanta Mallik*, 21 C.W.N. 1180, I think they placed too narrow a meaning on the words "in pursuance of". Compliance with a condition imposed by a court is, in my opinion, an act done in pursuance of the court's order and I think that the narrow construction proposed in the judgment mentioned would render Art. 6 nugatory. It does not follow, however, that because a security bond falls within the scope of Art. 6, Sch. II of the Court-Fees Act, it is free from the provisions of the Stamp Act. This Act contains a clause—s. 2 (5)—which enumerates three kinds of instruments which are to be regarded as bonds. Then in Schedule I there are three Articles which have a bearing on the question before us, viz. Arts. 15, 40 and 57. They are as follows :—

Art. 15. Bond as defined by s. 2 (5) not being a debenture (No. 27) and not being otherwise provided for by this Act or by the Court-Fees Act, 1870.

Art. 40. Mortgage deed, not being an agreement relating to Deposit of title deeds, pawn or pledge (No. 6), Bottomry bond (No. 16), Mortgage of a crop (No. 41), Respondentia Bond (No. 56) or Security Bond (No. 57).

Art. 57. Security bond or Mortgage deed executed by way of security for the due execution of an office, or to account for money or other property received by virtue thereof or executed by a surety to secure a due performance of a contract.

A comparison of these articles shows that Art. 15 is of a residuary character intended for bonds which cannot be assigned to any other of the articles of the Stamp Act and are not provided for by the Court-Fees Act. It is the only Article in which reference is made to the Court Fees Act. It follows therefore that a bond which finds its proper place in one of the other Articles is not exempt from duty under the Stamp Act; at the same time, as being given in pursuance of the Court's order, it is liable under Art. 6, Sch. II of the Court-Fees Act.

The answer that I propose to the reference is that the security bonds executed in pursuance of an order of the Court under O. 32, r. 6 (2) or any other rule or section of the Civil Procedure Code must bear a court-fee stamp as required by Art. 6 of Sch. II of the Court-Fees Act 1870; and they will also be chargeable under the Stamp Act if they are of the kind described in Art. 40 or Art. 57 but they will not be chargeable under the Stamp Act if they fall under the residuary Art. 15."

Commenting on this decision the learned authors Mulla and Pratt in their Commentaries on the Indian Stamp Act 2nd Edn. p. 191

observe as follows: "This decision is undoubtedly correct. This case rules that bonds given under the Civil Procedure Code are chargeable with court-fee only if they fall under Art. 15; but are chargeable with court-fee and stamp duty if they fall under Art. 40 or Art. 57. Many bonds called security bonds under the Civil Procedure Code are not security bonds under Art. 57 as they do not secure the execution of an office or the performance of a contract. Thus simple bonds executed for appearance under O. 38, r. 2, or for the production of property under O. 38, r. 5 or by a next friend for minor's property under O. 32, r. 6 (2), are not security bonds under Art. 57 and would be liable only to court-fee. But a security bond by a Receiver under O. 40, r. 3 would be liable to court-fee and to stamp duty under Art. 57. Security bonds given for stay of execution of a decree under O. 41, r. 5 or 6, or for costs of appeal under O. 41, r. 10 are mortgages and are liable to court-fee and to stamp duty under Art. 40." See also *Sarbo Mussulmani v. Safar Mandal*, 49 C. 997=1923 Cal. 269. See also the recent Full Bench of decision of the Madras High Court in *Pitchamma v. Pedamunayya*, 68 M. L. J. 466=41 L. W. 482 (F.B.) holding that the acceptance by a court of a bond previously furnished is equivalent to an order of court followed by compliance with it. A bond executed by a surety in pursuance of an order under s. 55 (4), C. P. C., holding himself responsible for the debtor filing an insolvency petition within a month and for appearing in any proceeding whenever called upon, and undertaking to pay the decree amount if the judgment-debtor fails to comply with any of these conditions need only be stamped with a court fee stamp of annas eight under this Article. As it imposes only a personal obligation and does not hypothecate any immoveable property, Art. 40 of Sch. I of the Stamp Act has no application to it and Art. 57 is equally inapplicable to the case as the bond was not executed for any of the purposes mentioned in that Article. *Ghulam Mahomed v. Emperor*, 14 Lah. 284=141 I. C. 301=1933 Lah. 89 (S. B.); *Jowala Mal v. Gian Chand*, 143 I. C. 12 (Lah.).

**Bond creating a mortgage or charge on immoveable property.**—Where a bond given in pursuance of an order of court within the meaning of this Article is not simply a bond but also creates a charge or mortgage on immoveable property set out in the bond then clearly stamp fee is payable as on a mortgage bond. The above quoted decision *Reference from the Munsif of Habi Ganji*, 53 C. 101, is also authority for this position. See also *Kalwanta v. Maha Bir Prasad*, 11 A. 16. In Madras there was a lack of uniformity in practice in the matter of the collection of the stamp duty the same having been indiscriminately calculated as laid down in Art. 40 or 57 of the Indian Stamp Act. Hence the following circular was issued by the High Court of Madras. It was issued to clearly state the proper procedure to be followed in cases where the bond executed to Court creates also a mortgage. The circular runs as follows:—

"It has come to the notice of the High Court that the practice obtaining in the districts in regard to the levy of stamp duty on security bonds executed in pursuance of an order of court is not uniform. The High Court therefore directs that such security bonds should be stamped only under Art. 6, Sch. II of the Court-Fees Act; but, if immoveable property is mortgaged under the document it should be stamped both under Art. 6, Sch. II of the Court-Fees Act and under Art. 40, Sch. I of the Indian Stamp Act. Art. 57 of the Indian Stamp Act would not apply to security bonds executed in pursuance of an order of Court. The bonds should be executed either in favour of an officer of Court or in favour of the opposite party." *D. Dis.* 665/29 dated 23rd March 1928.

This recent circular of the High Court of Madras approves of the view taken in Reference Case No. 19 of 1911 Madras Registration Gazette 1912 page 239 which referred to and dissented from the earlier view taken in Reference Case No. 9 of 1908 of the Madras High Court which held that the court-fees leviable under Art. 6 of the Court-Fees Act is sufficient where the bond creates a mortgage of immoveable property set out in the Schedule to the document. See also *Amirthammal v. Madalakavan*, 43 M. 363 = 57 L. C. 184 = 38 M. L. J. 503 = 12 L. W. 537 (F. B.), where a receiver executed a bond in favour of the judge of the court and while making himself personally responsible for the due execution of his duties, also set out certain immoveable properties belonging to him and mortgaged them also, it was held that a court-fee under this Schedule and a stamp duty under Art. 40, Sch. I of the Stamp Act was leviable.

**"Not otherwise provided for by Court-Fees Act."**—A rather interesting case arose in *In re the District Munsiff of Tiruvallur (Referring Officer)*, 37 Mad. 17 (F. B.), where a bond was executed in pursuance of the rules framed under the old Code of Civil Procedure Act XIV of 1882, which was inconsistent with the rule in the Schedule I of the present Code of 1908. It was there held as follows:

Until the rules are framed by the High Court under the new Civil Procedure Code (Act V of 1908), the rules made by the Government under s. 269 of the old Civil Procedure Code (Act XIV of 1882) are in force, though they may be inconsistent with O. 21, r. 43 of the first Schedule to the new Civil Procedure Code.

A bond given in pursuance of the rules made under powers conferred by a section of the Code must be deemed to be given in pursuance of an order made by a court under a section of Civil Procedure Code and is consequently "otherwise provided for by the Court-Fees Act" (see Schedule II, Art. 6 Court-Fees Act VII of 1870 and Schedule I, Art. 15 of the Indian Stamp Act II of 1899). The stamp is an eight anna stamp under the Court-Fees Act.

"The power given to the Local Government by s. 269 of the old Code to make rules for the maintenance of attached livestock is now given to the High Court by s. 128 (2) (b). O. 21, r. 43 reproduces the

old s. 269, but it does not reproduce the provision requiring the officer attaching the property to act in accordance with the rules notwithstanding they may be inconsistent with the provisions of the section. Section 157 of the Code of 1908 keeps alive the rules, etc., made under the old Code so far as they are consistent with the Code of 1908. There is nothing in the Code of 1908 as distinguished from the orders in the first schedule to the Code, which is inconsistent with the rules issued under s. 269, though there is an inconsistency between the rules and O. 21, r. 43. But the High Court has power to alter the rules in the first schedule. This being so, I do not think it follows that, because the rules made under the old section are inconsistent with the rules in the schedule, they are not consistent with this Code within the meaning of s. 157. The point is not free from doubt, but until rules are made by the High Court, I think the rules made by Government under s. 269 of the old Code are in force. Section 157 is an enabling section and not a repealing one. The rules have never been expressly repealed and I do not think we are bound to hold they are implicitly repealed by virtue of the words 'so far as they are consistent with this Code', which occur in s. 157. As regards the question raised in the letter of reference, as the bond is given in pursuance of a rule made under power conferred by a section of the Code, I think the bond may be said to be given in pursuance of an order made by a Court under a section of the Code of Civil Procedure, that consequently, the bond is 'otherwise provided for by the Court-Fees Act' (see Sch. II, Art. 6, Court-Fees Act, 1870 and Sch. I, Art. 15 of the Indian Stamp Act, 1899), and that the stamp is an eight annas stamp under the Court-Fees Act."

**Bond for protection of attached moveable property.—**

In Madras see the Madras High Court's amendments to Sch. I, C. P. C. and the Madras Rules 43, 43-A and 43-B of O. 21, C. P. C. as also the rules set out in C. R. P. and C. O.

In *Sarbo Mussalmani v. Safar Mandul*, 49 C. 997=1923 Cal. 369=68 I. C. 730, it was held that a bond executed by a claimant to produce certain attached goats when required by court should be stamped with a court-fee under Art. 6. See also *Reference under the Court-Fees Act, re The District Munsif of Tiruvallur*, 37 M. 17=20 I. C. 775.

**Security for costs in appeals to the Privy Council.—**

Now security is taken by virtue of the provisions of the Code of Civil Procedure O. 45, r. 7 and any bond that is executed is to bear a court-fee under this Article. The earlier decisions to the contrary based on the fact that such security was then taken under the rules framed by the Privy Council itself and hence could not come within the strict letter of Art. 6 are no longer good law.

**Security bonds executed in favour of village courts.—**

A security bond was taken by a Village Court under s. 53 of the **Village Courts Act (I of 1889)**. The question was what stamp this



document should bear. No stamp was collected for the alleged reason that the document fell within Art. 6, Sch II of the Court-Fees Act and as Government exempted the court-fees payable under the Court-Fees Act in Village Courts. This is not correct. "Sch. II, Art. 6 as amended applies to bail bonds and other instruments of obligation under the Criminal Procedure Code or under the Civil Procedure Code. Now this bond cannot be treated as under the C. P. C. for the Code does not apply to Village Courts at all. That has been so ruled in *Sankaran Nair v. Achuthan*, 46 Mad. 734 = 1923 Mad. 651. The document falls under Art. 46 of Sch. I-A of the Madras Stamp Act as amended which speaks of 'security bonds or mortgage deeds executed by way of security for the due execution of an office or to account for money or other property received by virtue thereof.' \*\* Apparently when exempting from court-fees all documents filed in the Village Courts an omission was made as regards this particular document. If this is so, it will always be open to the Government to put it right by the necessary notification. As the law at present stands, we are of opinion that the document should have borne a six annas stamp." *Cheedellah Chenchiah v. Ammi Reddi Pichi Reddi*, 52 M.L.J. 153 = 25 L. W. 246 = 1927 Mad. 377 (F. B.).

**Security bonds filed in small cause suit.**—Section 17 of the Provincial Small Causes Courts Act provides that an applicant for an order to set aside a decree passed *ex parte* or for a review of judgment shall, at the time of presenting his application either deposit in the court the amount due from him, or . . . give security to the satisfaction of the court for the performance of the decree, etc. These documents were held not to fall under this Article as they were not taken under the Code of Civil Procedure See Bombay Printed Judgments 1897, page 167. This decision is quoted with approval by the learned authors of Mulla and Pratt's Stamp Act, 2 Ed., p. 198. But in a recent Reference under the Stamp Act decided by a Full Bench, the Madras High Court has after a full discussion of the question held that a security bond filed along with an application to set aside an *ex parte* decree passed against him in a small cause suit comes under Sch II, Art. 6 and is not liable to stamp duty under the Stamp Act. The order passed by court setting aside an *ex parte* decree in a small cause suit, under s. 17, Provincial Small Causes Courts Act, is also one passed under the provisions of the C. P. Code. The bond must be deemed to have been given in pursuance of an order of court as the acceptance by the court of a bond previously furnished is equivalent to an order of the court followed by compliance with it. (37 Mad. 17 F. B. and 43 Mad. 363, relied on.) See *Pitchamma v. Padamunayya*, 68 M. L. J. 466 = 41 L. W. 482 = 1935 Mad. 380 (F. B.).

**Exemptions.**—Section 19 (ix) of the Court-Fees Act exempts from court-fees bail bonds in criminal cases, recognizances to prosecute or give evidence and recognizances for personal appearance or otherwise.

In the notification of the Government of India (*sec* reductions and remissions of the Government of India, Appendix 7), there is a remission of the "fees chargeable" on security bonds for the keeping of the peace by or good behaviour of persons other than the executants. The combined effect of these two provisions is that almost all bail bonds executed in criminal cases are exempt from court-fee and being "otherwise provided for in the Court-Fees Act" within the meaning of Art. 15 of the Stamp Act, such bonds are also exempt from stamp duty.

**Indemnity bond.**—The stamp fee for this is provided for in Art. 34, Schedule I of the Stamp Act. There is no reservation here as in Art. 15 of the Act.

**Execution of bonds.**—Obviously the documents could not be taken in the name of the court for as has been laid down by their Lordships of the Privy Council in *Raj Rajbir Singh v. Jai Indra Bahadur Singh*, 42 All. 158=46 I. A. 228=38 M. L. J. 362=55 I. C. 550, "A court is not a judicial person. It cannot take property and consequently could not assign it." Hence a bond should be taken only in the name of an officer or the presiding judge of a court. *Vide* Form No. 3 Appendix G of the Civil Procedure Code of 1908. The Form shows that it is intended to be given to someone and not a mere undertaking to the court. Whether that some one be the other party or the officer of the court is not made clear. With regard to indemnity bonds, it is but proper that they should be executed in favour of the other party *vide* for instance Form 6, Appendix III-D, Part II, Vol. II of the C.R.P. and C. O. at Madras in cases where one party gives an indemnity to the opposite party in a partition suit. Similarly where a decree is passed on a lost negotiable instrument and indemnity is taken under O. VII, r. 16, C. P. C, the bond has to be executed in favour of the opposite party, though a practice to the contrary prevails in the original side of the High Court of Madras where indemnity bonds are taken in the name of the Registrar.

**Enforcement of the bonds.**—As regards the enforcement of the bail bonds, see the Code of Criminal Procedure. The security and indemnity bonds executed to Civil Courts are on the breach of the conditions therein specified assigned over to the party for whose benefit they were taken and the terms thereof are enforced by them.

Sometimes the practice leads to difficulties. The following case arose in the District of Madura in the Presidency of Madras. A party executed a security bond in favour of the presiding judge of the District Munsif's Court and mortgaged his properties. But the properties were subject to an earlier undischarged encumbrance. The prior encumbrancer filed a suit on his mortgage and impleaded the judge of the court as the puisne encumbrancer. This happened before the court could assign the security bond in favour of the

person for whose benefit it was taken. The presiding officer of the court was held to be a proper party. He had no defence. He had to put the plaintiff to proof of his claim—and he cannot refrain from doing so—and he had to bear the costs which the Government had ultimately to pay. In such cases it may perhaps be a better course for the court to assign the bond forthwith to the person for whose benefit it was taken and the transfer taking effect *pendente lite*, the assignee could well have been brought on record. But the assignment can be effected only on the would be assignee filing proper stamp paper for execution by the judge and if he fails to do so, the court will be powerless to effect the assignment. It is easier to realise the difficulty than to find a solution for it and the only consolation is that such things come to pass only very rarely.

## Article 7.

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Undertaking under s 49  
of the Indian Divorce Act.

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Eight annas. [One  
rupee in Bombay  
and the Punjab.  
Twelve annas in  
United Provinces.]

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## COMMENTARY.

**Local amendments.**—This article has been amended in Bombay, the Punjab and the United Provinces and the fee raised as indicated in the third column.

**Indian Divorce Act (IV of 1869).**—It is an Act relating to divorce of persons professing the Christian religion, and to divorce and matrimonial causes in India. Section 49 thereof is as follows:—

“Where a petitioner is a minor he or she shall sue by his or her next friend to be approved by the Court; and no petition presented by a minor under this Act shall be filed until the next friend has undertaken in writing to be answerable for costs.

Such undertaking shall be filed in Court and the next friend shall thereupon be liable in the same manner and to the same extent as if he were a plaintiff in an ordinary suit.”

The fee of eight annas was originally provided for in s. 49, but the clause “shall bear a stamp of eight annas” was deleted from the section and the same fee provided for in this Article of Sch. II of the Court-Fees Act.

**Articles 8 and 9.** [Repealed by the Repealing and Amending Act 1891 (XII of 1891).]

## Article 10.

<p>Mukhtarnama or Vakalatnama [or any paper signed by an Advocate signifying or intimating that he is retained for a party—Mad.]</p>	<p>When presented for the conduct of any one case—</p> <p>(a) to any Civil or Criminal Court other than a High Court, or to any Revenue Court or to any Collector or Magistrate, or other executive officer, except such as are mentioned in clauses (b) and (c) of this number.</p> <p>(b) to Commissioner of Revenue, Circuit or Customs or to any officer charged with the executive administration of a division, not being the Chief Revenue or Executive Authority.</p> <p>(c) to a High Court, Chief Commissioner, Board of Revenue, or other Chief Controlling Revenue or Executive Authority.</p>	<p>Eight annas. [One rupee in Bengal, Bihar and Orissa, Madras and the Punjab] [Twelve annas in United Provinces and Central Provinces.]</p> <p>One rupee. [One rupee eight annas in Bengal, Madras and United Provinces. Two rupees in Bihar and Orissa.]</p> <p>Two rupees. [Three rupees in Bihar and Orissa, Madras and United Provinces]. [Two rupees and eight annas in Central Provinces.]</p>
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## COMMENTARY.

**Amendment.**—This Article has been amended in Bengal, Bihar and Orissa, Central Provinces, Madras, the Punjab, and the United Provinces, the only change being the enhancement of the fees leviable except in Madras where the Article is made to include memorandum of appearance.

**Memorandum of appearance.**—It is doubtful whether a memorandum of appearance should bear a court fee stamp of Rs. 2 as it contains an authority to plead although the authority is filed by the pleader himself. *Raj Kumar Pal v. Janab Ali Mian*, 35 C.W.N. 1100 = 59 Cal. 370. But in Madras memorandum of appearance also is included in the Article as being chargeable to court-fee.

**Vakalatnama.**—Is a document or power of attorney executed in favour of a pleader. Vide O. 3, r. 4, C. P. C. “The appointment of a pleader to make or do any appearance application or act for any person shall be in writing and shall be signed by such person” or by his agents. Every such appointment shall be accepted by the pleader.

**Pleader.**—The word is defined in the Code of Civil Procedure s. 2 (15) as follows:—“Pleader means any person entitled to appear and plead for another in court and includes an advocate or vakil and an attorney of the High Court.”

**Legal practitioner.**—Is defined in the Legal Practitioners' Act (XVIII of 1879) s. 3 as follows :— " Legal Practitioner means an Advocate, Vakil or Attorney of any High Court, a pleader, mukhtar or revenue agent."

**Mukhtar.**—" A mukhtar is an attorney whether appointed specially or generally or certified as a legal practitioner." 15 I. C. 122.

**Mukhtarnama.**—" A Mukhtarnama is a document that empowers a Mukhtar to act for the person by or on whose behalf the document is executed and includes a power of attorney in favour of a person other than a certified Mukhtar," 15 I. C. 122 dissenting from 33 A. 487, where the view was taken that it does not include a power to a person who is not a certified mukhtar.

**Form and execution of Vakalatnama.**—Several Forms are prescribed by the various High Courts for use in the mofussil courts, for use in the Appellate Side of the High Court and on its original side. For those see the Rules and Orders of the several High Courts. In the case of Madras, see C. R. P. and C. O. Vol. I, Rules 18 and 19 of Chapter I, the Appellate Side Rules and the Original Side Rules.

**Power of attorney.**—This is defined in s. 3 (21) of the Stamp Act (II of 1899) as "including any instrument *not chargeable with a fee under the law relating to court-fees for the time being in force*, empowering a specified person to act for and in the name of the person executing it."

**Vakalatnama or power of attorney.**—From the definition of a power of attorney it will be clear that a Vakalatnama is a power of attorney and has got all its incidents but as regards stamp duty payable thereon, it does not come within the definition of a power of attorney where it is chargeable with a court-fee. But vakalats filed in Presidency Small Cause Courts and in the original side of the High Courts are not chargeable to court-fee and hence may be liable to stamp duty under the Stamp Act. In *Hormusji v. Nani*, 58 Bom. 597 = 36 Bom. L. R. 658 = 1934 Bom. 399, it has been held that a vakalat given by a client to his advocate to be used in the Bombay Presidency Small Cause Court falls under the definition of 'power of attorney' in the Stamp Act and is liable to stamp duty under Act. 48 (b) of that Act. Therefore the practice obtaining in the original side of the High Court and in the Presidency Small Cause Court at any rate in Madras, of receiving vakalats without any stamp seems to be not in consonance with the Stamp Act. Vakalats are only a species of powers of attorney. Where they are chargeable to court-fee, they are exempt from stamp duty according to the definition of a power of attorney in the Stamp Act. Therefore it follows that in cases where no court-fee is collected, the vakalats are chargeable as powers of attorney. Consequently it appears expedient either to validate the current practice by the Government framing a rule exempting

vakalats filed in the original side of the High Court and the Presidency Court of Small Causes from payment of stamp duty or insist on such documents being stamped. Another course that may be adopted to secure uniformity of practice, instead of having some vakalats stamped with general stamps and others with court-fee stamps, is for the High Court to frame rules under the Letters Patent levying court-fee on vakalats. Even then the position is not quite clear as it is still open to doubt whether such rules could be construed to be "law relating to court-fees for the time being in force" as set out in s. 3 (21) of the Stamp Act. If that is not so construed then such vakalats may be liable both for court-fees and for stamp duty. This is the position as regards vakalats filed on the original side of the High Court. Regarding vakalats filed in the Presidency Court of Small Causes, the Court-Fees Act not being applicable to same, it is doubtful whether government can levy court-fee on vakalats under the provision of s. 71 of the Presidency Small Cause Courts Act (Act XV of 1882). In any case it appears necessary that the practice should be in conformity with the law.

**Recognised Agents.**—O. III, r. 2, C. P. C. defines what recognised agents are. They are :—

(a) persons *holding powers of attorney*, authorising them to make and do such appearances, applications and acts on behalf of such parties ;

(b) persons carrying on trade or business for and in the name of parties, etc.

**Mukhtarnama executed in favour of persons who are not certified practitioners.**—Though there is no difference in the case of the construction of Vakalatnamas which are executed in favour of legal practitioners, there is a want of unanimity in the view taken about a Mukhtarnama. The view taken in *Permanand v. Sat Prasad*, 33 All. 487 F. B. is that a document purporting to authorise the person in whose favour it was executed, who was not a certified mukhtar or pleader to appear and do all acts necessary for the execution of a decree of a court requires to be stamped as a power of attorney with a one rupee stamp and not as a Vakalatnama or Mukhtarnama. Their Lordships observed as follows :—

"The donee of the power is not a certified mukhtar or pleader, and the question is whether under these circumstances the document is duly stamped. S. 2, clause (21) of the Stamp Act defines the expression "power of attorney" in the following terms :—"A power of attorney includes any instrument (not chargeable with a fee under the law relating to court-fees for the time being in force) empowering a specified person to act for and in the name of the person executing it." The present document, as we shall presently show, clearly falls within this definition. Article 48 of Schedule I of the Stamp Act provides for the stamp on a power of attorney falling within the definition

which we have quoted above. Clause (c) provides that when the document authorises one person or more to act in a single transaction other than the case mentioned in clause (a) the proper stamp shall be one rupee. Clause (g) is a general provision for all such powers of attorney not provided for by other clauses.

Article 10, Schedule II of the Court-Fees Act provides for the stamping of mukhtarnamas and vakalatnamas. Clause (a) refers to a mukhtarnama and vakalatnama presented to any Civil or Criminal Court other than a High Court or to a Revenue Court or to any Collector or any Magistrate or other Executive Officer except such as are mentioned in clauses (b) and (c). Clause (b) provides for the same class of documents when presented to a Commissioner of Revenue, Circuit or Customs or to any officer charged with the executive administration of a division, not being the chief revenue or executive authority. Clause (c) provides for the same class of documents when presented to a High Court, Chief Commissioner, Board of Revenue or other chief controlling revenue or executive authority. It appears to us that all these documents are documents which it was intended to exclude from the definition of the expression power of attorney in s. 2, clause (21) of the Stamp Act. It, therefore, seems to us that it is clear that the documents referred to in Art. 10, Sch. II of the Court-Fees Act are restricted to documents given to and presented by duly certificated mukhtars and pleaders under the Legal Practitioner's Act."

But this view was not accepted in *Ganpat v. Prem Singh*, 15 I.C. 122, where it was held that a power of attorney empowering a person who is neither a Vakil of a court nor a certified Mukhtar of a court to represent another in a Civil Court is governed not by Art. 48 of 1st Sch. of the Stamp Act but by Art. 10 of Sch. II of the Court-Fees Act. The decision in *Permanand v. Sat Prasad*, 33 A. 487 = 9 I.C. 617 was not followed. A *Mukhtar* is an attorney, whether appointed specially or generally certified as a legal practitioner. *Mukhtarnama* is a document that empowers him to act for the person by or on whose behalf the document is executed and includes a power of attorney in favour of a person other than a certified Mukhtar. The documents specified in Art. 10, Sch. II are the documents which it was intended to exclude from the definition of a power of attorney in s. 2 (21) of the Stamp Act.

Referring to the 33 A. 487 decision their Lordships observe thus : "In the F. B. ruling of the Allahabad Court their Lordships said that the documents referred to in Art. 10, Sch. II of the Act were restricted to documents given to and presented by duly certificated Mukhtars and pleaders under the Legal Practitioners Act. We regret we are unable to follow that line of argument. It does not dispose of the question whether a Mukhtarnama includes a power of attorney in favour of a person other than a certified Mukhtar. The mere juxtaposition of Vakalatnama and Mukhtarnama in the Article does not in our opinion indicate that a Mukhtar or attorney

must be a legal practitioner because a Vakil usually is a legal practitioner. Moreover many persons described as Vakils who are agents of Native States are not legal practitioners."

**Scope of Vakalatnama.**—A Vakalatnama authorising a pleader to receive during the course of a suit which he has been empowered to conduct, money or documents receivable by his client in the ordinary course of such suit or in consequence of the order or decree of the court does not require a stamp under the Stamp Act. It was observed as follows : "The receipt of money or documents under such circumstances is one of those ordinary duties which pleaders are continually called upon to perform for their clients and a Vakalatnama properly framed generally contains a power to perform such duties. If therefore the legislature had intended that in every such case a general or special power of attorney should be necessary to enable the pleader to receive the money or the documents it may be assumed that it would have said so in express terms." *Anonymous*, 3 Cal. 767.

**"Conduct of a case"**.—It includes an application for copies (*Reference* 9 M. 146) and receipt of money and documents (*Anonymous* 3 C. 767).

**Vakalats in civil suits.**—The Civil Procedure Code Amendment Act XXII of 1926 s. 2 (b) has re-enacted O. 3, r. 4, C. P. C. so that all practitioners including Advocates are now required to file vakalats unlike the procedure that was followed under the older rule by which Advocates were exempted. Now rule 4 (1) lays down that "No pleader shall act for any person in any court, unless he has been appointed for the purpose by such person by a document in writing signed by such person, etc., making such appointment." The definition of a 'pleader' is found in s. 2 (15) of the Code and means any person entitled to appear and plead for another in court and includes an Advocate a Vakil or an attorney of the court." Therefore Advocates too have now to file a vakalat. Of course it may be noted that without a vakalat they could only not act. Regarding 'pleading' provision is made in O. 3, r. 4, cl. (5) which lays down that "No pleader who has been engaged for the purpose of pleading only shall plead on behalf of any party, unless he has filed in court a memorandum of appearance signed by himself, etc."

**Vakalats in criminal cases.**—Section 340 of the Code of Criminal Procedure enacts that any person accused of an offence before a criminal court or against whom proceedings are instituted under this Code in any such court may of right be defended by a pleader. The right to be defended by a pleader applies to appeal also. The Criminal Procedure Code unlike the Code of Civil Procedure nowhere prescribes the mode of appointment of pleaders and there is no authority for the proposition that in criminal cases a pleader must file an authority from his client in order to enable him to present an application or appeal on behalf of his client and to act for him in criminal cases. Art. 10 of Sch. II of the Court-Fees Act prescribes a



fee for Vakalatnamas when presented to a criminal court including a High Court. It merely means that when an authority is filed such authority should be stamped. It does not make it necessary that a Vakalatnama should be filed in criminal cases. *Subba Sontal v. Emperor*, 1926 Pat. 296 = 1926 Pat. (C. W. N.) 125 = 94 I. C. 714.

**Madras.**—The following note was originally incorporated in the Madras Stamp Manual under this Article. "There is no provision of law which requires that a Vakalat should be presented in criminal cases or that a memorandum of appearance filed by a pleader should be stamped. G. O. 774 Judicial 12-6-1909 and Board's Proceedings No. 905 R. Mis. dated 3-7-1909 and No. 672 Mis. dated 29-5-1913." But this has been deleted and the following note substituted for same by G. O. No. 445 Mis. Public dated 8-5-1925. Board's Proceedings R. Mis. 248 dated 19-9-1925.

Every pleader (as defined in s. 4 (r) of the Code of Criminal Procedure) other than an Advocate or a public prosecutor, appearing for the prosecution in any criminal proceedings shall file in court a vakalatnama from his client authorizing him so to appear. Every such pleader defending an accused person and every Advocate appearing in any criminal proceedings in any court shall be required to file a memorandum of appearance containing a declaration that he has been duly instructed to appear by or on behalf of the party whom he claims to represent.

The Vakalatnama referred to above and the memorandum of appearance filed by an Advocate appearing for the prosecution should bear a court-fee stamp of one rupee when filed in connection with criminal proceedings in any court other than a High Court and of three rupees in the case of the High Court. The memorandum of appearance filed by a pleader on behalf of the accused is not liable to bear any court-fee stamp and that filed by an Advocate on behalf of the accused is exempt from payment of court-fee by virtue of the notification under s. 35 of the Court-Fees Act dated 3rd March 1925.

(G. O. No. 445 Mis. Public dated 8th May 1925. B. P. R. Mis. 248, dated 19th September 1925.)

After the amendment of 1922, an anomaly arose regarding the memoranda of appearance filed by Advocates for accused in criminal cases. While memoranda of appearance filed by pleaders for accused were not chargeable to court-fees, those filed by Advocates became chargeable by virtue of the specific mention made of memoranda of appearance filed by Advocates. This was rectified by the addition of the following clause to Item 23 of Notification No. 358, dated 10th September 1921.

(d) to remit the fee payable under Art. 10 of Sch. II by Advocates on memoranda of appearance filed by them when appearing for the accused in criminal cases.

(B. P. No. 84 Mis. dated 20th April 1925).

**Municipal Cases.**—A further exemption was made in the case of Municipal prosecutions.

Item 23 of Notification No. 358 dated 10th September 1921 runs thus :

“(f) to remit the fee chargeable under Art. 10 of Sch. II of the Madras Court-Fees Act, 1922 (Madras Act V of 1922) in respect of a Vakalatnama or any paper signed by an Advocate signifying or intimating that he is retained for a party, when presented to any criminal court for the conduct of any prosecution on behalf of : Municipal Council to which the Madras District Municipalities Act 1920, (Madras Act V of 1920), applies or on behalf of the Corporation of Madras or a Local Board to which the Madras Local Boards Act, 1920 (Madras Act XIV of 1920) applies.”

(B. P. R. No. 59 *Mis.* 19th February 1927).

The result of these several notifications is that in Madras court-fee is payable on vakalats or memoranda of appearance of Vakils and Advocates filed on behalf of the complainant (except in Municipal prosecutions in Madras) and no fee is payable on such documents where the appearance is on behalf of the accused.

**Vakalats in consolidated suits and appeals.**—Where suits were ordered to be consolidated the question arose whether a single vakalat would suffice in all of them or whether separate vakalats should be filed in each of them. In *In re Perumal Nadar*, 54 M.L.J. 595 = 109 I. C. 651, where it was sought to consolidate 38 Second Appeals into one batch and 52 into another batch for the purpose of filing one vakalatnama in each of the batches, it was held (Devadoss, J.) that only one Vakalatnama in each batch need be filed. The learned Judge was of opinion that the very object of consolidation was to save the party unnecessary expense and the court unnecessary trouble, that where the court allows consolidation it allows the parties to the appeals to treat the consolidated appeals as one and that Art. 10 of Sch. II to the Court-Fees Act does not stand in the way of consolidation. Dealing with the argument based on O. 41, r. 1 which requires a separate memorandum of appeal, the learned Judge was of opinion that it does not follow that because a separate memorandum ought to be filed in each case the engagement of the pleader should be separate. He however held that the production of one Vakalatnama in different cases does not at all obviate the necessity of producing the decree in each case though the court may dispense with the production of copies of judgments in each case. But this decision has been over-ruled by the decision in *In re Maharaja of Venkatagiri*, 53 Mad. 248 (F. B.) The plaintiff filed 118 suits against 118 sets of tenants for recovery of arrears of rent under s. 77 of the Estates Land Act. The suits were dismissed and he filed 118 appeals from those decrees. The appeals also were dismissed. He then sought to prefer second appeals to the High Court from the decrees of the lower appellate

Court and put in an application under s. 151, C. P. C. to consolidate them so that he might file (1) a single Vakalatnama, in all of them together and (2) only one court-fee on the aggregate value of the 118 second appeals. The case came before Walsh, J., who doubted the correctness of the ruling of Devadoss, J. The matter was therefore referred to a Full Bench, who held that no consolidation could be allowed so as to enable the appellant to pay one single court-fee on the aggregate value of all the second appeals as such a course would contravene ss. 4, 6 and 17 of the Court-Fees Act or to prosecute them on a single Vakalatnama as it would contravene Article 10 of Schedule II of the Court-Fees Act, Rules 1 and 4 of Order XLI of the Civil Procedure Code and Rule 31 of the Appellate Side Rules. Similarly in *In re Vaithalinga Pandara Sannadhi*, 53 M. 262 (F. B.) it was held that the High Court has no inherent jurisdiction to consolidate cases so as to enable the party to file one vakalat in them or one process fee for the common respondents.

## Article 11.

Memorandum of appeal when the appeal is not \* \* \* from a decree or an order having the force of a decree [or of cross objection—in Bihar and Orissa] and is presented—

### Madras.

[Memorandum of appeal when the appeal is from an order inclusive of an order determining any question under s. 47 or s. 144 of the Code of Civil Procedure, 1908, and is presented—

(a) to any Civil Court other than a High Court, or to any Revenue Court or Executive Officer other than the High Court or Chief Controlling Revenue or Executive authority.

(b) to a High Court or Chief Commissioner or other Chief Controlling Executive or Revenue authority.

Eight annas.

[Bihar and Orissa, Central Provinces, Madras and the Punjab—One rupee.]

[Bengal—when presented to any Revenue Court or Executive Officer, other than the High Court or Chief Controlling Revenue or Executive Authority—Eight annas, when presented to any Civil Court other than a High Court—One rupee.]

[In United Provinces—Twelve annas.]

Two rupees.

[Bengal—when presented to a Chief Controlling Executive or Revenue authority—Two rupees; when presented to a High Court—Five rupees.]

[Bihar and Orissa, Central Provinces and the Punjab—Four rupees.]

		[In United Provinces —when presented to a Commissioner of the division,—Two rupees; to a High Court or to a Chief Controlling Executive or Revenue Authority— Three rupees.]
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## COMMENTARY.

**Amendment.**—The words “from an order rejecting a plaint or” were omitted by s. 155 (Sch. IV) of the Code of Civil Procedure, 1908.

**Local amendments.**—This Article has been amended in Bengal, Bihar and Orissa, Central Provinces, Madras, the Punjab and the United Provinces.

**The Madras amendment.**—The original Article applied to all appeals which were not from decrees or orders having the force of a decree. Instead of that, the Madras Amendment Act has introduced an amendment which has clearly and definitely restricted the scope of the Article. Instead of generalising the exceptions, the scope of the Article is positively and definitely stated.

**Decree: Order.**—For the definition of the words see s. 2 (2) and (14) Civil Procedure Code.

It is provided in the definition of a ‘decree’ that ‘it shall be deemed to include the rejection of a plaint and the determination of any question within s. 47 or s. 144’. Consequently the provision in the Code that provided for appeals from orders passed under ss. 47 and 144 are now deleted as redundant, and appeals lie from such orders as they are deemed to be decrees. The effect of this amendment on Article 11 of the Court-Fees Act is that appeals from orders under ss. 47 and 144 Civil Procedure Code are excluded “as decrees” and become liable to pay *ad valorem* duty under Schedule I Article 1. But this was sought to be removed by the Governor-General issuing a notification (*vide* Reductions and Remissions in the Appendix) to the effect that the fee payable on appeals from orders under s. 47 Civil Procedure Code should require court-fee only under this Article and not under Sch. I, Art. 1 as they would otherwise be. But s. 144 Civil Procedure Code is not mentioned in the notification. The effect is that appeals against orders under s. 144 may not come under Art 11 unless the view is taken that applications under s. 144 C. P. C. should be deemed to be applications relating to execution and consequently coming under s. 47 Civil Procedure Code.

It was held by the Allahabad High Court in *Baij Nath v. Balmukhand*, 47 All. 98=82 I. C. 322=1924 All. 137 that *ad*

*valorem* fee is payable and the U. P. Government then intervened and so far as the Province is concerned included applications under s. 47, C. P. C. in the items of Reductions and Remissions and made Article 11 Sch. II Court-Fees Act applicable to same. Still it has not included applications coming under s. 144, Civil Procedure Code. The Madras Amendment has however solved this difficulty and amended the Article by specifically making it inapplicable to orders passed under ss. 47 and 144, Civil Procedure Code. See under the heading 'Restitution orders' *infra*.

**Order having the force of a decree.**—A "decree" having been defined as the formal expression of an adjudication which so far as regards the Court expressing it determines the rights of the parties, with regard to all or any of the matters in controversy in the suit, it follows that where all the elements set forth in the definition are not present, then the decision is an "order." Where a decision amounts to a decree it is appealable unless an appeal is expressly excluded. Section 96, Civil Procedure Code. When it amounts only to an "order" no appeal lies from it unless it is enumerated in the list of appealable orders set out in s. 104 or in O. 43, r. 1, Civil Procedure Code. It may also be noted that s. 2 (2), Civil Procedure Code excludes from the definition of a decree any adjudication from which an appeal lies as an appeal from an order and any order of dismissal for default.

**Restitution Orders.**—Section 144, Civil Procedure Code provides for cases of restitution. Appeals arising from such applications are chargeable under this Article and *ad valorem* fee is not leviable. *Gangadhar Marwari v. Lachman Singh*, 11 C. L. J. 541; *Madan Mohan Dey v. Nagendra Nath Dey*, 21 C. W. N. 544; *Sayad Jamidalli v. Ahmad Alli*, 45 B. 1137=62 I. C. 233; *Gobba v. Kanchodi Lal*, 67 I. C. 225; *Balmukund v. Basanta Kumar*, 3 P. 371; *Sital Prasad Singh v. Jagadeo Singh*, 4 P. 294=1925 Pat. 577; *Moti Singh v. Court of Wards*, 1927 Lah. 635; *Rahmat Alli v. Rikhi Kesh*, 1928 Lah. 143.

Though s. 2 (2), Civil Procedure Code read with Art. 11, Sch. II of the Court-Fees Act results in applications under s. 144, Civil Procedure Code being liable to pay an *ad valorem* court-fee leviable on decrees, still the Governor-General and all the Provincial Governments have neutralised the effect by issuing notifications to the effect that applications under s. 47, Civil Procedure Code are to be charged under Art. 11 alone. But s. 144 not being mentioned along with s. 47 the question arises with reference to s. 144 whether such restitution applications come under Art. 11. The view taken by almost all the High Courts is that such applications are also deemed applications relating to execution and falling under s. 47, Civil Procedure Code and that by virtue of the notifications, Art. 11 applies. In Madras by virtue of the amendment to the Article itself this difficulty does not arise. These applications for restitution are treated as applications relating to execution coming under s. 47, Civil Procedure Code.

See *Sudalainuthu Pillai v. Sudalaimuthu Pillai*, 71 I. C. 173 = 1923 Mad. 2270.

**Remand orders.**—Section 107 (b) empowers an appellate Court to remand a case. O. 41, r. 23, Civil Procedure Code provides that where the Court from whose order an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the appellate court may remand the case and direct what issue or issues shall be tried, etc. A preliminary point is any point whether of fact or of law, the decision of which avoids the necessity for a full hearing of the suit. *Raman Nayar v. Krishnan*, 45 M. 900 = 69 I. C. 828 = 1923 Mad. 505 (F. B.) The remand can be made only where the whole suit has been disposed of by the Lower Court upon the preliminary point. The appellate court is incompetent after finding on facts to remand the case to the lower court to pass a decree in accordance with that finding. *Sham v. Banarsi*, 66 I.C. 866 = 1922 All. 192.

Apart from this provision, the appellate court has ample inherent powers under s. 151, Civil Procedure Code to remand in cases of error, omission or irregularity. *Ghuznavi v. The Allahabad Bank, Ltd.*, 44 C. 929 = 41 I. C. 598. In this case their Lordships of the Calcutta High Court who formed the Full Bench did not approve of the view of Jenkins, C.J. in *Mani Mohan v. Ramratan*, 43 B. 148 = 33 I. C. 329, that the powers of an appellate court to order remand was limited to the provisions of O. 41, r. 23 read with s. 107, Civil Procedure Code. The Full Bench ruling of the Calcutta High Court has been followed in PATNA, *Raghunadan v. Jadunadhan*, 43 I. C. 956 = 3 Pat. L. J. 253; *Musst. Sumitra Kuer v. Bam Kair*, 57 I. C. 561 = 5 Pat. L. J. 410; in BOMBAY *Jethalal v. Varaj Lal*, 46 B. 184 = 1922 Bom. 267; in LAHORE *Umri v. Shah Mahomad*, 5 L. L. J. 269 = 1924 Lah. 36 = 74 I. C. 47; in MADRAS *Raman Nayar v. Krishnan*, 45 M. 900 = 1922 Mad. 505; *Subba v. Krishnama Chari*, 45 M. 449 = 1922 Mad. 112. O. 41, r. 23, has since been amended in Madras, so as to cover all cases of remand.

**Appeal from remand orders.**—An appeal lies from an order remanding a case, where an appeal would lie from the decree of the appellate Court. O. 43, r. I clause (u), Civil Procedure Code. What is the nature of the order? Is it a decree or an order having the force of a decree? It is neither. Consequently, it falls within the scope of this Article and not under Art. 1 of Sch. I of this Act, *Lakshman v. Rama Esu*, 8 Bom. H. C. R. (A. C.) 17; *Bishunath Saran Singh v. Jagraj Kuar*, 1933 Oudh 191.

But there are certain cases where the order of remand makes an adjudication of the rights of parties and what the lower court is required to do is only to work out the details. For instance where in a suit for possession and mesne profits, a decision is given by the appellate court on the merits and the suit is remanded simply to enable the lower court to ascertain the amount of mesne profits, then the

remand order is practically a decree and in an appeal against it the court-fee payable is as for an appeal against a decree and Art. 1, Sch. I applies. *Raghunath Das v. Jhari Singh*, 45 I. C. 100=3 Pat. L. J. 99.

In *Subba Goundan v. Krishnmachari*, 45 M. 449, their Lordships observed thus "There can be little doubt that, so far as the powers of remand are concerned, the powers conferred by O. 41, r. 23 are not exhaustive. There are cases where, though the suit is not disposed of on a preliminary point, yet owing to an improper or defective inquiry in the lower court where for example relevant documents are not admitted or material witnesses have not been examined and the appellate court is not in a position to adjudicate finally upon the matter in dispute, the inherent jurisdiction to do justice between the parties has been invoked \* \* A remand to a lower court implies that something has to be done by the lower court in relation to the matter remanded to it. In cases falling within O. 20, r. 12 the proper course for the Appellate Court to take is not to remand a suit where it finds that a person is entitled to possession but to pass a preliminary decree so far as possession is concerned and direct an enquiry as to mesne profits in case the lower court has not dealt with that question." Even though in this case it was not so done it was held that the lower appellate court must be deemed to have passed a preliminary decree and the direction to ascertain mesne profits must be deemed to have been given under O. 20, r. 12, C. P. C. An appeal against it must therefore be stamped under Art. 1, Sch. I.

In need hardly be observed that even where an appellate court remands a case in cases where it has no jurisdiction to do so or in cases where it ought not to have done so, still the question of appeal depends simply on what the court has in fact done and not on what it could or could not have done. *Gokul Prasad v. Ram Kriar*, 44 A. 176; *Kulsan-i-hissa v. Ram Prasad*, 44 A. 492; *Chowduri v. Mithu Rai*, 6 Pat. 380. It was of course held in *Bahirab v. Kali*, 1923 Cal. 606=37 C. L. J. 481, that where the appellate court set aside the decree of the trial court and ordered a retrial, it was a decree which reversed the decree of the court of first instance and an appeal therefore is not an appeal from an order under O. 43, r. 1 (u) but an appeal against a decree under s. 96 read with s. 100 of the Code. The reason given is that by virtue of the appellate order the plaintiffs lost a valuable right they have acquired under the first court's decree, and hence that the appellate order setting aside the lower court's decree is itself a decree.

It is submitted that this reasoning is applicable to all cases, not only to orders of remands under O. 41, r. 23, Civil Procedure Code but to every order of remand passed by an appellate court. In a case decided on its merits and not on a preliminary point alone,—in which case alone O. 41, r. 23, Civil Procedure Code will apply—and the appellate court remanded the entire suit for re-hearing, it was

held that it did not amount to a decree as there was no final determination in the appellate court of all or any of the matters in controversy between the parties; *Banka Bahary v. Birendeanath*, 55 C. 219. It is all a case of what a court has done and not what it ought to have done. Where the powers of an appellate court in the matter of remand are not confined to O. 41, r. 23 and the court could in the exercise of its inherent powers (s. 151) remand cases where O. 41, r. 23 is not applicable, it follows that the order of remand cannot be *appealed* against as O. 43, r. 1 (u) specifically refers to only remands under O. 41, r. 23, though by virtue of the local amendment in Madras, every order of remand is covered by that rule and is an appealable order. Of course a revision petition can be filed. But in cases where as for example in the decisions quoted above (*Raghunada Das v. Jhari Singh*, 3 Pat. L. J. 99; *Subba Goundan v. Krishnamachari*, 45 M. 449) the order of remand is by itself a final adjudication of the rights of the parties when obviously it partakes of the nature of a decree, an appeal lies as from a decree.

### **Orders relating to Arbitration proceedings and award.—**

Section 104 of the Code of Civil Procedure specifies the cases when appeals lie from orders relating to arbitration proceedings and award.

Section 104 Cl. (a) refers to an order superseding an arbitration where the award has not been completed within the period allowed by the court. Cl. (b) refers to an order on an award stated in the form of a spacial case, and Cl. (c) to an order modifying or correcting an award. These are obviously orders and appealable as such and the court-fee leviable is under the Article. Cl. (d) relates to an order filing or refusing to file an agreement to refer to arbitration. In a suit to file an agreement to refer a matter to arbitration a decision was passed refusing a reference on the ground that the agreement to refer was not proved. On the plaintiff appealing against such refusal, it was held that a decision passed under s. 523, Civil Procedure Code is a decree and an appeal lies therefrom under s. 540 of the Code. *Gowdu Magatha v. Gowdu Bagwan*, 22 M. 299. Cl. (e) refers to an order staying or refusing to stay a suit where there is an agreement to refer to arbitration. Here too it is only an order. Cl. (f) refers to an order filing or refusing to file an award in an arbitration without the intervention of the court. There has been a good deal of confusion and conflict of decisions on the matter. This is due to the fact that under old Civil Procedure Code such orders were held to be decrees and hence appealable as such, in which case the court-fee payable was under Article 1, Sch. I of the Court-Fees Act. On an application to file an award made on a reference to arbitration without the intervention of the court a decree was made to the effect that the plaintiff do recover a certain sum of money as awarded by the arbitrator. It was held that an order directing such an award to be filed is an order having the force of a decree and an appeal from such an order is an appeal from a decree and ought to bear a court-fee in accordance with Art. 1,



Sch I of the Court-Fees Act. *Hari Mohan Singh v. Kali Prasad Chalia*, 33 C. 11.

Their Lordships further observed thus "An order directing that an award be filed is an order having the force of a decree and is in effect a decree and this is in accordance with the ruling of the Privy Council in *Ghulam Khan v. Mohammad Hassan*, 29 Cal. 167, which clearly lays down that an order made in a contentious proceeding under ss. 525 and 526, Civil Procedure Code, is a decree. The view which we take was also taken by Oldfield, J., in *Dayanand v. Kathatavar*, 5 A. 333." But under the C.P.C. of 1903, the position is different. See *Agya Singh v. Sundar Singh*, 9 Lah. 380 = 107 I.C. 756 = 1928 Lah. 137, where the appeal was against an order directing the filing of an award made without the intervention of court. It was held, dissenting from *Gowri Shanker v. Ananda Ram*, 94 I. C. 646, a decision of a single judge that under the present Code s. 104 (f), the order was appealable as an order and that the appeal came within this Art. 11 as an appeal against an order. See also *Sawan Pande v. Jagat Pande*, 50 A. 128 = 103 I., C. 315 = 1927 All. 771. See also the decision in *Ram Autar v. Ram Samujh*, 6 Luck. 703 = 139 I.C. 622 = 1932 Oudh 282, to the effect that such an order is neither a decree nor an order having the force of a decree and that an appeal therefrom need only be stamped with a court-fee of Rs. 2 under this Article.

**Certain orders under the C. P. C.**—Section 35-A of the Code provides for compensatory costs in respect of false or vexatious claims or defences and s. 95 provides for the grant of compensation for obtaining arrest, attachment or injunction on insufficient grounds. Appeals are provided against these orders in s. 104. Though the direction to pay any amount as compensation in reality partakes the nature of a decree, still in view of the definition of a decree in s. 2 (2) of the Code of Civil Procedure, this can only be construed as an order and an appeal as a Civil Miscellaneous Appeal.

*Orders under O. 7, r. 10* returning plaint for presentation to the proper court. It is only an order not having the force of a decree.

*Orders under O. 8, r. 10* pronouncing judgment against a party for refusal to file written statement. This concludes the suit and hence has the force of a decree.

*Orders under O. 9, r. 9* rejecting an application for an order to set aside the dismissal of a suit. The order has not got the force of a decree.

*Orders under O. 9, r. 13.* This relates to *ex parte* decrees and similar remarks apply to same.

*Orders under O. 10, r. 4* pronouncing judgment against a party on failure to appear to answer questions. This completely disposes of the suit and is one having the force of a decree.

*Orders under O. 16, r. 10.* Order attaching property. It has not the force of a decree.

*Orders under O. 16, r. 20* pronouncing judgment against a party for refusal to give evidence. This adjudges the rights of parties and is an order having the force of decree.

*Orders under O. 21, r. 34.*—An order on an objection to a draft of a document or of an endorsement, has not the force of a decree.

Order under O. 21, r. 72 or 92 setting aside or refusing to set aside a sale, Order under O. 22 r. 9 refusing to set aside the abatement or dismissal of a suit, Order under O. 22, r. 10 giving or refusing to give leave to continue suit, Order under O. 25, r. 2 rejecting application for an order to set aside the dismissal of a suit, Order under O. 34, r. 3 or 8 refusing to extend the time for the payment of mortgage money, Orders in inter-pleader suits under rr. 3, 4 or 6 of O. 38, or under r. 1, 2, 4 or r. 19 of O. 39 or under r. 1 or 4 of O. 40, or an Order of refusal under r. 19 of O. 41 to readmit or under r. 21 of O. 41 to rehear an appeal or order refusing grant of a certificate under O. 45, r. 6 or an application for review under O. 47, r. 4—all these orders against which appeals are provided for in O. 43, r. 1, Civil Procedure Code are simple orders and they are not such as could be deemed to have the force of decrees. Even in the case of an order under O. 23, r. 3. recording or refusing to record an agreement, compromise or satisfaction of a claim, though a decree might result when the compromise is recorded, still the decree is something apart from the order directing the record of compromise and an appeal lies from the order as distinct from the decree. In that case it cannot be stated that the order is one having the force of a decree.

An appeal from the final decree passed under O. 34, r. 5, Civil Procedure Code requires an *ad valorem* Court-fee and cannot be stamped as an appeal from an order. "Looking at the change which has been made by the Legislature, in O. 34, rr. 4 and 5 as compared with ss. 88 and 89, Transfer of Property Act, we have no doubt that the court-fee payable is *ad valorem*." *Bajrangi Lal v. Mahabir Kunwar*, 35 A. 476. See under Sch. I, Art. 1 as to appeal against an order on an application to pass a final decree under O. 34, r. 5.

**O. 21, r. 50 (2).**—An appeal from an order under O. 21, r. 50 (2), C. P. Code is an appeal from a decree and not a Civil Miscellaneous Appeal and is chargeable to *ad valorem* court-fee as for a regular appeal. *Bhutnath Ta v. Barinda N. Bhattacharjee*, 60 Cal. 530 = 37 C.W.N. 227 = 1933 Cal. 546. See also *Jugal Kishore Gulab Singh v. Dina Nath Sri Ram*, 35 P.L.R. 555 = 1934 Lah. 958 and other cases cited under Sch. I, Art. 1.

**Execution against surety.**—Section 145 Civil Procedure Code provides the decree or order may be executed against the surety and that he will be deemed a party within the meaning of s. 47. Such orders come within the definition of a decree and court-fee will be leviable as in an appeal from a decree. But the local Governments

have issued notifications under s. 35 of the Act limiting the fee payable to the amount chargeable under Art. 11 of Sch. II. In Madras, such appeals expressly come within this Article.

**Appeal against order relating to mesne profits.**—Under the Code of 1882, the amount of mesne profits was determined in execution proceedings and was held to come under s. 244 (c) (now s. 47) of the Code and that the same was taxable under the Article. *Itraj Kumwar v. Bacha Madho*, 6 O.C. 86. Under the Code of 1908, (Order 20, Rule 12), the amount is to be determined by the decree itself and the party aggrieved by the determination of the mesne profits could now prefer an appeal against the decree. *Nanda Kumar v. Bilasram*, 3 Pat. L. J. 116 = 43 I. C. 855. See under Sch. I, Art. 1, for further commentaries.

### Orders under certain Acts.

**Bengal Tenancy Act (VIII of 1885).**—Proceedings under certain sections of this Act for settlement of rent, etc., were started by a petition before the Revenue Officer. S. 107 of the Act provided that his order was to have "the force of a decree," and s. 108 provided that an appeal would lie from it to the Special Judge. S. 189 invested the local Government with power to make rules "consistent with this Act" "to regulate the procedure to be followed by Revenue Officers." Accordingly the Government prescribed among others a rule (No. 30) that the proceeding before the Revenue Officer should be "dealt with" as a suit. In 18 Cal. 667 it was held that an appeal from an order of the Revenue Officer was an appeal from a decree and did not therefore come within this Art. but came within Art. 17 (6) of this Sch. This decision was dissented from in 23 Cal. 723 (F. B.), where it was held that the proceeding before the Settlement Officer which gave rise to the appeal was only a petition and not a suit, that s. 107 of the Act did not prescribe that the decision of the Revenue Officer shall be a decree (which can arise only in a suit according to the definition in s. 2 C. P. C.), but only that it shall have "the force of a decree" which it may have without the proceeding necessarily becoming a suit, that none of the rules framed by the Government under the Act lay down that such a proceeding shall be a suit, but that they prescribed only that the proceeding shall be "dealt with" as a suit, that is to say, in respect of its *procedure*, that s. 189 gave power to the Government to make rules only to regulate the procedure to be followed by Revenue Officers, that therefore if instead of prescribing that the proceeding shall be dealt with as a suit the Government had made a rule that the proceeding shall be a suit it would have been regulating more than the procedure and the rule would have been *ultra vires* of s. 189, that there having been thus no suit in the matter, the memorandum of appeal could not come within Sch. II Art. 17 of the Court-Fees Act which Article prescribes the fee for a memorandum of appeal 'in a suit,' that there was no provision of the Court-Fees Act expressly applicable to the appeal, that the proceeding

having been initiated not by a suit but by a petition no appeal properly so called could be presented in it at a later stage, and that the appeal was therefore chargeable only as a petition under Sch. II, Art. 1.

It is difficult to understand why when the matter is called an appeal in the Tenancy Act it should be regarded only as a petition for the purpose of the Court-Fees Act. S. 107 of the Tenancy Act provides that the order of the Revenue Officer shall have the force of a decree. This provision is put in not to give a right of first appeal from the Revenue Officer's decision to the Special Judge, for that right is expressly given by s. 108, but to give a right of second appeal from the Special Judge's decision to the High Court under s. 100 of the Civil Procedure Code. It is extremely anomalous to treat the appeal as an appeal from a decree for the purpose of the Tenancy Act and the Civil Procedure Code and as a petition for the purpose of the Court-Fees Act. There appears to be no warrant for making such a distinction. The Court-Fees Act itself does not contain any definition of the words 'decree,' 'order,' 'appeal,' 'suit' etc. The reason is obvious. It is not its province to lay down principles of substantive law. Its function is to charge court-fees on matters brought before courts; and for this purpose it can only take the nomenclatures adopted for those matters by other Acts which guide and regulate the procedure of courts. See observations of Schwabe, C. J. in S. R. 1923/23 (Mad.) referred to in the commentary under Sch. I Art. 1, where it was contended that an order rejecting a plaint being only "deemed to be" a decree in the C. P. C., it was in essence not a decree at all and that an appeal from it was therefore only chargeable as an appeal from an order under Sch. II Art. 11, but his Lordship negatived the contention and held that what is deemed to be a decree in the C. P. C. is a decree for the purpose of the Court-Fees Act also.

It has further to be remarked that when the Government has made a rule clothing the proceeding with the character of a suit, there appears to be no valid reason why it should not be regarded as a suit for the Court-Fees Act also. It is therefore to be doubted whether the decision in 18 Cal. which was superseded by the decision in 23 Cal. is not the correct view. These Calcutta decisions under the old Bengal Tenancy Act are not now of any practical consequence, as special rules have now been framed regarding the court-fees in the proceedings under the Act, and the Act also has been amended by Act IV of 1928.

In 8 Mad. 22, a decision under the Madras Forest Act, it was held that the decision of the Forest Settlement Officer appealed from had been made in proceedings in the nature of suit by virtue of the provisions of that Act, that the decision was a decree, and that the appeal therefore came within Sch. II Art. 17. So also in the recent decision 55 Mad. 641, where the appeal was from Land Acquisition proceedings and it was held that it came within Art. 17.

**Indian Companies Act.**--Appeal from orders under s. 53 or 114 of Act VI of 1882 (now Act VII of 1913) fall under this Article.

*Reference under the Court-Fees Act, 17 A. 238; Nawab of Bella Spinning and Weaving Company v. Atmaram, Bom. P.J. 1885, p. 214.*

**Land Acquisition Act.**—An appeal regarding compensation in a land acquisition case is not one under Art. 11, Sch. II because s. 8 refers to an *ad valorem* charge which is provided for only in Sch. I, Art. 1. *In re Anand Lall Chakrabutty*, 59 Cal. 528=35 C. W. N. 1103=1932 Cal. 346. But where the dispute is between rival claimants, an appeal would fall under this Article if the order does not purport to decide the merits of the rights of the rival claimants but simply refers the parties to a separate suit. *Harischandra v. Bhaba Tarini*, 8 C. W. N. 328. An appeal by a rival claimant against the decision of the District Court in land acquisition proceedings ordering that the money be deposited in *custodia legis* on behalf of another claimant does not come under this Art. or Art. 1 of Sch. I, but comes within Art. 17 of Sch. II, and court-fee is payable in it as for a declaration. *Thammaya Naidu v. Venkataramanamma*, 55 Mad. 641. See commentary under Art. 17.

**Succession Certificate Act VII of 1889**—This and several other Acts have been repealed and consolidated into the present Indian Succession Act of 1925. An appeal against an order under s. 19 of the Succession Certificate Act (s. 384 of the present Act) falls under this Article. C. M. A. 125 of 1900 Mad. unreported).

**Madras Forest Act V of 1882.**—An appeal to the District Court from the rejection of a claim by a Forest Settlement Officer under clause 2 of S. 10 of the Madras Forest Act 1882 falls under Art. 17 (6) and not under Art. 11, Sch. II of the Court-Fees Act as the decision appealed from must be regarded as one made “in proceedings in the nature of a suit” and it disposed of the right claimed. *Kamaraja v. Secretary of State*, 8 M. 22 (24).

**Indian Succession Act.**—The Succession Act of 1865 and the Probate and Administration Act of 1881 have been consolidated into and replaced by the Indian Succession Act of 1925. The present s. 295, which combines s. 261 of the Act of 1865 and s. 83 of the Act of 1881, provides “In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure 1908, in which the petitioner for probate or letters of administration as the case may be shall be the plaintiff and the person who has appeared to oppose the grant shall be the defendant.” And s. 299 (made up of s. 263 of the Act of 1865 and s. 86 of the Act of 1881) provides that every “order” of the District Judge shall be subject to appeal “in accordance with the provisions of the Code of Civil Procedure 1908 applicable to appeals”. These last words within quotation signify that the order would be appealable only if it is appealable according to the code, *i.e.*, if it is a decree within the meaning of s. 2 (2) of the Code and therefore appealable under s. 96 of it, or if it is one of the appealable orders mentioned in s. 104 of it.

*Khelframoni v. Shyama*, 21 Cal. 539. Though the decision of the District Judge granting or dismissing an application for probate is mentioned as an order in the section, it is really a decree within the meaning of s. 2 C. P. C. and is appealable as such, though it is not one of the appealable orders mentioned in s. 104. *Umrao Chand v. Bindraban Chand*, 17 All. 475 and *Shaik Azim v. Chandra Nath*, 8 C. W. N. 748. It was contended in these cases that as the decision of the District Judge is termed an "order" in the section and as that order is not one of the appealable orders mentioned in s. 104, no appeal at all lay, but the court held that it is appealable as a decree, the application for probate being a suit by virtue of the provision in s. 83 of the Probate Act (s. 295 of the present Act) and the order passed having conclusively determined the right claimed so far as the District Judge's court was concerned. It is not all orders that are decrees, but only such orders as satisfy the definition in s. 2 C. P. C., i.e., as conclusively determine the right claimed by the parties in the suit. In *Eva Mountstephens v. Hunter Garnet Orme*, 35 All. 448, the applicant executrix appealed to the High Court against the order of the District Judge dismissing her application for letters of administration. She framed her appeal as an appeal against an order and paid a court-fee of Rs 2 under Sch. II, Art. 11 of the Court-Fees Act, and contended that the decision of the District Judge is termed an order in the Succession Act, that therefore the fee paid was correct, and also that the practice in the court as regards appeals from such orders of District Judges was to file them as appeals against orders on a fee of Rs. 2. But it was held, following the above decisions that, under s. 261 of the Succession Act (s. 295 of the present Act), the "proceeding in the court below was actually in the form of a civil suit in which the applicant was the plaintiff and the person who opposed the grant was the defendant", that the order was therefore a decree within the meaning of s. 2 C. P. C. that the practice as regards appeals from the original jurisdiction of the High Court itself in the matter was to treat them as appeals from decrees whatever may have been the practice with regard to similar appeals from the decisions of District Judges, that therefore the appeal was a first appeal from a decree in a *suit*, and that the relief in appeal being incapable of valuation was subject to a fixed court-fee of Rs. 10 under Sch. II Art. 17 of the Court-Fees Act. In Madras, in Appeal No. 94 of 1900 (unreported—Benson and Bhashyam Ayyangar, JJ.) it was held that the order of the District Judge under the Probate and Administration Act had the force of a decree, that therefore Sch. II Art. 11 was inapplicable, and that the appeal should be stamped *ad valorem* under Sch. I Art. 1. This was followed in appeal No. 194/1900 (unreported, Davies and Bhashyam Ayyangar, JJ). The same bench decided on the same date in civil miscellaneous appeal No. 125 of 1900 (unreported) that an appeal under s. 19 of the Succession Certificate Act of 1889 (now s. 384 of the Indian Succession Act of 1925) is only an appeal against an order not having the force of a decree and that it need be stamped

only with Rs. 2 under Sch. II Art. 11. The Bench thus treated the order in the one case, *viz.*, for probate or letters of administration under the sections of the old Acts (corresponding to s. 299 of the present Act) as a decree, and the order in the other case, *viz.*, for succession certificate under s. 19 of the old Act (s. 384 of the present Act) as a mere order not amounting to a decree. This is because proceedings for probate or letters of administration are suits by virtue of the provision in the present s. 295 (s. 83 of the old Probate Act and s. 261 of the old Succession Act), while there is no such provision as regards the proceedings for succession certificates either in the present Act or in the old Act. These proceedings are mere petitions and not suits. In another unreported case appeal No. 54 of 1900 decided later the application was under the Probate Act, but it was for revocation and not for grant of probate. The court (Sir Charles Arnold White, C.J. and Benson, J.) held that the case was distinguishable from the above appeals Nos. 94 and 194 of 1900, that only an application for probate but not one for revocation was a suit according to the concluding words of s. 83 (present s. 295), that the order appealed from was therefore not a decree as defined in s. 2 Civil Procedure Code and that Sch. II Art. 17 (6) of the Court-Fees Act was inapplicable to the appeal as that Article applied only in the case of suits and a proceeding to revoke a grant of probate was not a suit. The Court however observed that when the Court-Fees Act was passed, the Civil Procedure Code of 1859 was in force and did not contain any definition of decree corresponding to that contained in s. 2 of the present Code, that the order therefore though not technically a decree for the purpose of the present Civil Procedure Code had the force of a decree, that is to say, in the words of s. 2 of the Civil Procedure Code it was "a formal expression of an adjudication upon a right claimed" and that Sch. II Art. 11 of the Court-Fees Act was therefore inapplicable. In the end the court held that *ad valorem* stamp was payable under Sch. I Art. 1.

The current of decisions that a proceeding for probate was a suit was disturbed in *Rodrigue v. Mathias* (1911) 21 M.L.J. 481 where the appeal was against an order granting probate and it was held (Sankaran Nair and Munro, JJ.) that the appeal not having arisen in a suit but only in a petition was not an appeal proper and was only a petition and was chargeable only as such with a fee of Rs. 2 under Sch. II Art. 1 of the Court-Fees Act. In so deciding their Lordships followed the analogy of the decisions under the old Bengal Tenancy Act in 23 Cal. 723 and under the Guzerat Tenancy Act in 16 Bom. 408—which decisions held that proceedings under those Tenancy Acts were not suits, that on that ground Sch. II Art. 17 (under which a fixed fee of Rs. 10 was payable) was inapplicable to the appeal there as that Article speaks of "a plaint or memorandum of appeal *in a suit*" and as the order appealed against had not arisen in a suit but in proceedings initiated by a petition, and that therefore the appeal was chargeable only as a mere petition. Their Lordships also held that on principle

no *ad valorem* fee was leviable under Sch. I Art. 1 in the appeal (from the probate order), observing that the only title which the order appealed against gave to the petitioner was the right to administer the estate, that if he sues to recover the estate he will have to pay stamp duty on its value, and that stamp duty on the value of the estate should not be twice exacted. Their Lordships also excluded the application of Sch. II Art. 11 as the order appealed from decided the representative title and therefore had the force of a decree.

In a later case *Perumal Chetty v. W. Kandasamy Chetty*, (1922) 44 M. L. J. 146 (148), where the appeal was from the original side of the court, it was held that, the proceeding out of which the appeal arose was a suit in which the petitioner was plaintiff and the caveator defendant, that the decision in it was therefore a final judgment and not an order and that therefore a minimum fee of Rs. 150 (now Rs. 225) was payable in the appeal. The practice therefore in Madras as regards appeals from decisions of District Judges and from the original side of the High Court appears to vary. This was also the case in Allahabad before the decision in 35 Allahabad mentioned above.

It is submitted that the decision in 21 M. L. J. 481 cannot be supported. It is opposed to the three unreported Madras decisions mentioned above and also to the Allahabad and Calcutta decisions under the Succession Act. It is quite unsafe to apply decisions under the Bengal and the Guzerat Tenancy Acts analogically to cases under the Succession Act where there are decisions to the point under the latter Act itself. The Calcutta High Court itself has not applied its decisions under the Bengal Tenancy Act to cases under other Acts analogically. The Calcutta decisions referred to above lay down that a proceeding under the Succession Act is a suit and that an order passed in it is a decree. These decisions have been followed by the Allahabad High Court in 35 All. 445 as stated above in holding that an appeal under the Probate Act comes within Sch. II Art. 17 of the Court-Fees Act—which Article applies to a memorandum of appeal “in a suit.” More recently in *Pran Kumar Pal v. Darpahari Pal*, 54 Cal. 126 the Calcutta High Court has held that proceedings for the grant of probate when contested come within the meaning of the word ‘suit’ in cl. 13 of the Letters Patent. The above decision in 23 Cal. 723 under the Tenancy Act was not followed in 33 Cal. 11 (13) where the appeal was from an order filing an award made without the intervention of court (s. 525 of the C. P. C. of 1882). It was contended there that the proceeding which led to the order filing the award was commenced not by a suit but by a petition and that therefore according to the decision in 23 Cal. only a petition fee of Rs. 2 was payable in the appeal. But their Lordships distinguished that decision as one under the Tenancy Act the provisions whereof were substantially different from those in ss. 525 and 526 C. P. C. (which direct that the petition shall be numbered as a suit and the parties ranged as plaintiff



and defendant) and held following 29 Cal. 167 (P. C.) (which lays down that an order made in a contentious proceeding under ss. 525 and 526 C. P. C. is a decree) that the appeal was an appeal from a decree and was chargeable with *ad valorem* fee under Sch. I Art. 1 of the Court-Fees Act and did not come either under Sch. II Art. 1 (petition) or under Sch. II Art. 11 (appeal against order). It may be remarked here that in the Succession Act also there is a similar provision in s. 295 that a contentious proceeding for probate or letters of administration has to take the form of a suit and that the parties shall be ranged as plaintiff and defendant in it. In a recent case in Madras 66 M. L. J. 43 at p. 50 it has been observed that a contentious proceeding under the Succession Act is a suit. So also the decision in 9 Patna 507 holds that such a proceeding is a suit.

Further, there is no precise analogy in this matter between the Tenancy Acts and the Succession Act. S. 108 of the Bengal Tenancy Act provided that an order of the Revenue Officer under the Act was appealable to the Special Judge. But there is no such absolute provision in the Succession Act, s. 299 of which says only that the order shall be subject to appeal "in accordance with the provisions of the C. P. C. applicable to appeals." This condition postulates, as already explained, that the proceeding should be a suit and the order passed in it a decree. And then there is the provision in s. 295 that the proceeding shall take the form of a suit and the parties ranged as plaintiff and defendant. But the Bengal Tenancy Act itself did not contain any provision that the proceeding under it shall be a suit. Only, s. 189 of it invested the local Government with power to make rules "consistent with this Act," "to regulate the procedure to be followed by Revenue Officers." And accordingly rule No. 30 made by that Government directed that the proceeding should be "dealt with" as a suit. This is quite different, as stated in the decision in 23 Calcutta itself, from saying that the proceeding "shall be" a suit. The Government had power only to make rules to carry out the purpose of the Act and to regulate the procedure to be followed by Revenue Officers under the Act. If it did anything more and made any substantive rule of law, that would have been *ultra vires* of s. 189 of the Act. S. 107 of the Act also did not say that the Revenue Officer's decision was a decree, (which can arise only in a suit, according to the definition in s. 2 C. P. C.,) but said only that it was to have "the force of a decree," and this, as the decision itself says, it might have without the proceeding necessarily becoming a suit. This is in consonance with the view in the unreported Madras decision cited above, Appeal No. 54 of 1900, where it was held that a proceeding for probate was a suit and the order in it a decree by virtue of the express provision in s. 83 of the Probate Act but that a proceeding for revocation of probate was not a suit though the order passed in it may have the force of a decree as it decided a right claimed by the parties.

A proceeding for probate or letters of administration is thus seen to be a suit and the order in it a decree. The appeal from it is a regular appeal against a decree, and not appeal against an order or a mere petition. But it is submitted it is not fair to charge in the appeal *ad valorem* fee on the value of the estate, as the right agitated in the appeal is not the right to the estate itself but only the right to administer it. This appears to be a relief incapable of valuation, for which a fixed fee is payable under Sch. II Art. 17 of the Court-Fees Act as held in 35 All. 448.

### **Malabar Tenancy Act (Madras Act XIV of 1930).—**

There is no separate schedule of court-fee prescribed in this Act for suits and appeals under it. Consequently it is the general provisions of the Court-Fees Act that have to be applied to them. In s. 50 of the Act it is enacted that certain orders under it shall be appealable "as if they were decrees in suits." The appeals therefore are not chargeable with court-fees under this Article which applies only to appeals against orders. In S. R. No. 22825 of 1932 (unreported), where the lower court had granted an original petition filed by the tenant under s. 22 of the Act for renewal of the kanam demise and the landlord preferred an appeal on the ground that in granting renewal the lower court should have enhanced the rent to Rs. 46-5-8, it was held (Burn, J.) that the appeal being from a decree did not come under this Article and that as the amount in dispute was easily ascertainable, being the difference between the rent as declared by the lower court and the rent claimed by the landlord, *ad valorem* fee was payable on that amount under Article 1 of Sch. I in the appeal. It is to be noted that in this appeal the subject-matter in dispute was a definite amount and was therefore capable of easy valuation. But where an appeal is simply on the ground that renewal of the tenancy should not have been allowed by the lower court, the subject-matter of the appeal is not so easily capable of valuation and the appeal would then come, it is submitted, within Art. 17-B of Sch. II. *Vide* the decisions cited above under the Madras Forest Act and the Land Acquisition Act, where also the proceedings are started, as under the Malabar Tenancy Act by a petition. The decision of the Calcutta High Court in 23 Cal. 723 under the Bengal Tenancy Act cannot be applied to the case. There is no precise analogy between the Malabar and the Bengal Tenancy Acts, as the former Act provides that the orders under it have the force of decrees "in suits", while the latter provides merely that orders under it have the force of decrees. The words "in suits" do not occur in it. Further, the correctness of the Bengal decision is open to doubt. See comments on that decision, *supra*.

**Guzrat Talukdars's Act (Bom Act VI of 1888).—**Order rejecting application for execution of partition decree under the Act falls under Article 1 of Sch. II and not under this Article. *Jansang v. Goyabhai Kikabhai*, 16 B 408.

## Article 12.

Caveat.	...	<p>Five rupees, In Bengal, Behar and Orissa and Madras. Ten rupees. In Bombay, when the amount or value involved does not exceed Rs. 2,000— Five rupees. when the amount etc. involved ex- ceeds Rs 2,000— Ten rupees. In United Provinces where the amount or value of the pro- perty does not exceed Rs. 5,000— Five rupees, where it exceeds Rs. 5,000— Ten rupees.</p>
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## COMMENTARY.

**Local amendments.**—This Article has been amended in Bengal, Bihar and Orissa, Bomby and Madras.

**Caveat.**—"Where there is a question about a will or when the right of administration is in dispute, a *caveat* is usually entered. It is a caution, entered in the Court of Probate to stop probates, administrations, faculties, and such like from being granted without the knowledge of the party that enters". *Williams on Executors*.

"It is not a notice to any opponent in particular. It is a notice to the Registrar or officer of the court not to let anything be done by anybody in the matter of the will, or the goods of the deceased, without notice to the person who lodges the caveat": Per Lord Limley in *Moran v. Place*, (1876) P. 214.

It is in the nature of precautionary measure intended to assure that there shall be no proceedings in the matter of the estate of the deceased without notice to the person who files the caveat: *Bhabata-rini Devi v. Harichandra Bannerjee*, 20 C. W. N. 787 = 26 I. C. 38.

**Who can file and when can a caveat be filed.**—Any person interested in disputing a grant of probate or letters of administration may enter a caveat against the grant. A caveat may be entered before, as well as after, a petition for probate or letters has been filed; and a party may appear and oppose an application for the grant without entering a caveat. *Khasan Das v. Ram Saran Das*, 6 I. C. 650.

See Probate Procedure in British India by Mr. (now Justice) Cornish, p. 254.

Where a person interested in the estate of the deceased appears on citation, it is not necessary for him to lodge a caveat, which is in the nature of a precautionary measure intended to ensure that there shall be no proceeding in the matter of the estate of the deceased without notice to the person who files a caveat. Therefore a petition by which a party upon whom citation has been issued opposes the grant of probate is not a caveat and need not be stamped as such, but a petition fee is sufficient for it. *Bhabatarini v. Hari Charan Banerjee*, 20 C. W. N. 787 = 26 I. C. 38.

**Procedure.**—The procedure to be followed in the case of caveats lodged against the grant of probate or letters of administration is laid down in ss. 284 and 285 of the Indian Succession Act, 1925 and in Madras *see* the C. R. P. and C. O. of the Madras High Court Vol. I.

### Article 13.

Application under Act No. X of 1859, s. 26, or Bengal Act No. VI of 1862, s. 9, or Bengal Act No. VIII of 1869, s. 37.	.....	Five rupees.
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### COMMENTARY.

**Amendments.**—The Court-Fees Act being a very old Act enacted nearly 60 years ago in 1870, its provisions bristle with references to repealed and defunct enactments and the sections thereof have not been brought up-to-date. The necessity, therefore, arises in almost all cases to find out the corresponding sections of the new Act for the references embodied in the section.

**Act X of 1859.**—This was repealed by the Bengal Tenancy Act, 1885 (VIII of 1885), *see* the reprint of the Act as modified up to 31st May-1907, published by the Government of Bengal, in those portions of the Lower Provinces to which that Act extends and in the Chota Nagpur Division (except Manbhum and the Tributary Mahals) by the Chota Nagpur Landlord and Tenant Procedure Act, 1876 (Beng. Act I of 1879); (*see* now Beng. Act VI of 1908), Bengal Code, Vol. II; in the Province of Agra by Act XVIII of 1873; and in the Central Provinces by the Central Provinces Tenancy Act, 1883 (IX of 1883), Central Provinces Code.

**Bengal Act VI of 1862.**—Bengal Act VI of 1862 was repealed by the Bengal Tenancy Act, 1885 (VIII of 1885), so far as it affected those portions of the Lower Provinces to which that Act extends; and in the Chota Nagpur Division (except Manbhum and the Tributary Mahals) by the Chota Nagpur Landlord and Tenant Procedure Act, 1876 (Beng. Act I of 1879); (*see* now Beng. Act VI of 1908), Bengal Code, Vol. II; in the Province of Agra by Act XVIII of 1873; and in the Central Provinces by the Central Provinces Tenancy Act, 1883 (IX of 1883), Central Provinces Code.

tary Mahals) by the Chota Nagpur Landlord and Tenant Procedure Act, 1879 (I of 1879), (*see* now Beng. Act VI of 1898), Beng. Code Vol. II.

**Bengal Act VIII of 1869.**—This was repealed by the Bengal Tenancy Act, 1885 (VIII of 1885).

**Repeal.**—This Article has been omitted from Schedule II substituted for Madras by the Madras Court-Fees Amendment Act, 1922.

**Scope.**—See s. 91 of the Bengal Tenancy Act. The applications referred to in the Article relate to suits by landlords.

## Article 14.

Petition in a suit under the Native Converts Marriage Dissolution Act, 1866.	.....	Five rupees. [Ten rupees in Bihar and Orissa and Bombay.] [Seven Rupees eight annas in United Provinces.]
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## COMMENTARY.

**Local amendments.**—This Article has been amended in Bihar and Orissa, Bombay and in United Provinces so as to raise the fee.

**Native Converts' Marriage Dissolution Act.**—This is Act XXI of 1866. The object of the Act is to legalise, under certain circumstances, the dissolution of marriages of native converts to Christianity deserted or repudiated on religious grounds by their wives or husbands.

## Article 15. [Repealed.]

The Repealed Article ran as follows:—“*Plaint or memorandum of appeal in a suit for possession of a wife . . . . Five Rupees.*” This Article was repealed by the Code of Civil Procedure Act V of 1908, Sch. IV, and a suit for the possession of a wife is not one of the forms of action now allowed by the Code.

**Restitution of conjugal rights.**—A suit for restitution of conjugal rights is now the proper action and not one for the recovery of a wife. And such a suit will now fall under Art. 17 (vi) *infra* as it is not possible to estimate the money value of the subject-matter of the suit.

## Article 16. [Repealed.]

The repealed Article provided for an ‘Administration bond’ and the fee was fixed as Rupees Eight. This Article was repealed by Act VI of 1889. Art. 15 of the Stamp Act (1I of 1899) was also amended by the inclusion of the words “not otherwise provided in the Court-Fees Act.” The result is that Administration bond now requires only an *ad valorem* stamp duty under the Stamp Act and no court-fee need be paid for same.

## Article 17.

Plaint or memorandum of appeal in each of the following suits—

(i) to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court:

(ii) to alter or cancel any entry in a register of the names of proprietors of revenue paying estates:

(iii) to obtain a declaratory decree where no consequential relief is prayed:

(iv) to set aside an award:

(v) to set aside an adoption:

(vi) every other suit where it is not possible to estimate at a money-value the subject-matter in dispute, and which is not otherwise provided for by this Act.

.....

Ten rupees.

## COMMENTARY.

**Amendments.**—This article has been amended and amplified by the several local Acts in Bengal, Bihar and Orissa, Bombay, Central Provinces, Madras and United Provinces.

**Provincial amendments—Bengal.**—The fee for items (i), (ii), (iv) and (vi) is raised to Rs. 15 and the fee for items (iii) and (v) is raised to Rs. 20 by Act IV of 1922. By Act VII of 1935, the following entry has been inserted after entry (v), namely:

v-A. for partition and, separate possession of a share of joint family property or of joint property, or to enforce a right to a share in any property on the ground that it is joint family property or joint property if the plaintiff is in possession of the property of which he claims to be a coparcener or co-owner.

Fifteen rupees.

**Bihar and Orissa.**—The words “ memorandum of cross objections ” are added after the words “ memorandum of appeal ” so as to make this Article applicable to “ memorandum of cross objections ” and the fee raised to Rupees Fifteen, by Act I of 1922.

**Bombay.**—The following Article has been substituted by Act II of 1932 :—

17. Complaint or memorandum of appeal in each of the following suits :—	...	
(i) to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court ;	Where the amount or value of the property involved does not exceed five hundred rupees.	Ten rupees.
(ii) to alter or cancel any entry in a register of the names of proprietors of revenue paying estates ;	When the amount or the value of the property involved exceeds five hundred rupees.	Fifteen rupees.
(iii) to obtain a declaratory decree or order, where no consequential relief is prayed ;	...	Fifteen rupees.
(iv) to set aside alienation ;	...	Fifteen rupees.
(v) to set aside a decree or award ;	When the amount or value of the property involved does not exceed five hundred rupees.	Ten rupees.
	When the amount or value of the property involved exceeds five hundred rupees.	Fifteen rupees.
(vi) to set aside an adoption ; and		Fifteen rupees.
(vii) any other suit where it is not possible to estimate at a money value the subject-matter in dispute, and which is not otherwise provided for by this Act.	...	Fifteen rupees.

**Central Provinces.**—By Act XVI of 1935, the fee has been raised to Rupees Fifteen,

**Madras.**—By Act V of 1922, the following Articles have been substituted, namely :—

17. **Plaint or memorandum of appeal in a suit—**

(i) to alter or set aside a summary decision or order of any of the civil courts not established by Letters Patent or of any Revenue Court :

...

Fifteen rupees.

(ii) to alter or cancel any entry in a register of the names of proprietors of revenue paying estates.

.....

Fifteen rupees.

(iii) for relief under s. 14 of the Religious Endowments Act, 1863, or under s. 91 or under s. 92 of the Code of Civil Procedure, 1908.

... ..

Fifty rupees.

**17-A** **Plaint or memorandum of appeal in a suit—**

(i) to obtain a declaratory decree where no consequential relief is prayed :

When the plaint is presented to or the memorandum of appeal is against the decree of—

(ii) to set aside an award :

a District Munsif's Court or the City Civil Court.

Fifteen rupees.

(iii) to obtain a declaration that an alleged adoption is invalid or never in fact took place or to obtain a declaration that an adoption is valid.

a District Court or a Sub-Court.

Hundred rupees if the value for purposes of jurisdiction is less than ten thousand rupees; five hundred rupees if such value is ten thousand rupees or upwards.

**17-B** **Plaint or memorandum of appeal in every suit where it is not possible to estimate at a money value the subject-matter in dispute and which is not otherwise provided for by this Act.**

When the plaint is presented to or the memorandum of appeal is against the decree of—

a Revenue Court.

Ten rupees.

a District Munsif's Court or the City Civil Court.

Fifteen rupees.

a District Court or a Sub-Court.

One hundred rupees.



**United Provinces.**—By Act III of 1932, the fee mentioned in the 3rd column has been raised to Rupees fifteen and the following has been added to the original Article, namely :—

Provided that in a suit filed before a High Court under its original jurisdiction, the fee chargeable under this Article shall be one hundred rupees.

**Provisional nature of the fee.**—It may be noticed that all the suits grouped under this Article are not capable of valuation and hence a fixed fee is provisionally fixed by the Legislature in respect of the reliefs catalogued herein. If and when rules are framed for computing the value for court-fees in any or all the cases mentioned herein, the fee will have to be levied accordingly. *Ganapat Rao v. Lakshmi Bai*, 43 I. C. 64.

**Clause 1. To alter or set aside a summary decision or order.**

**Summary decision.**—This has not been defined either in this Act, the Civil Procedure Code or anywhere. “The words ‘summary decision’ is contended to mean a decision which is open to be contested by regular suit. I am not aware of any authority for that construction of the words ‘summary decision’. As I understand the words ‘summary decision’ or ‘award’ they mean a decision of the civil court not being a decree made in a regular suit or appeal”—per Jackson, J., in *Ramdhas Mandal v. Rameswar Bhattacharjee*, 2 Beng. L. R. 235.

“It is very difficult to say what is meant by the words ‘summary’ or to give a definition which would be applicable in all cases. \* \* It is the decision of a court, which hears and determines the matter but does not finally conclude the parties, a proceeding in which the court makes an order and determines the matter in issue, if I may so describe it, for the present occasion, in order to prevent some mischief which might ensue, if there was not a mode of coming to some decision at once in the matter. It may also be that by a summary proceeding is meant where no appeal lies and where the decision of the tribunal which hears and determines the matter is final.” *Maharajadiraj Mahatab Chunder Roy v. Baccha Ram*, 5 B. L. R. 162.

“In the absence of any definition, in the Court-Fees Act, of the term ‘summary decision or order’, we should rather be disposed to regard it as a decision or order not made in a regular suit or appeal. Applications under s. 246 of Act VIII of 1859 (now see O. 21 r. 58 of the Code of 1908) being made by an intervenient who is a stranger to the suit in which the attachment has been laid on, do not constitute a suit and are not conducted with the same regularity and plenitude of investigation a suit is conducted. Various tests have been suggested by the courts for determining what is a summary decision—see 6 Bom. H. C. R. 39; 2 Beng. L. R. 235; 5 Beng. L. R.

162 F. B. It has indeed been said that the words 'summary decision' is not sufficiently well known to justify the use of them as a technical term in an Act of the Legislature without any definition. Without positively binding ourselves to the proposition, that every decision or order not made in a regular suit or appeal is a summary decision or order, we are clearly of opinion, that decisions as to the removal or retention of attachment pronounced under s. 246 of Act VIII of 1859 are summary decisions or orders. The circumstance that Legislature expressly recognises the right of the party defeated in the proceeding under that section to bring a regular suit to reagitate the point decided is a strong indication that the Legislature regarded the decision under that rule as summary: but in saying this we do not intend to imply that the legislative recognition of such a right is an indispensable element in fixing whether or not a decision is summary." *Dayachand v. Hemchand*, 4 B. 515 at page 522.

**Summary decision or order under the Civil Procedure Code.**—This is different from the summary suits which are suits on negotiable instruments and provided for in O. 27 of the Code. Summary decisions or orders arise for example in claim proceedings and proceedings relating to dispossession in purchases under a court sale. Rr. 59 to 62 of O. 21, Civil Procedure Code provide for a summary investigation into possession as distinct from a thorough trial of ultimate right. The summary decision is a conclusive one subject to the result of a regular suit, that is, it is non-appealable. Similarly, O. 21, r. 103 provides that a party not being a judgment-debtor against whom an order is made under rr. 98, 99 or 101 may institute a suit to establish the right he claims, but subject to the result of such suit the order is conclusive. Consequently such orders are summary orders.

### Suits to set aside claim orders.

1. Where a claim petition is dismissed even for the default and without investigation, Rule 63 of O. 21 applies and a suit lies to set it aside. *Nagendra Lal v. Fani Bhushan Das*, 45 C. 785=44 I. C. 265; *Venkataratnam v. Ranganayakamma*, 41 Mad. 985=48 I. C. 270; *Maung Pya v. Matilakya*, 1 R. 481=1924 Rang. 42=76 I. C. 811. But see *Gokul v. Mohri Bibi*, 40 A. 325 and *Debi Prasad v. Maharaj Rupchand*, 49 All. 403, the correctness of which it is submitted is open to question. See also *Satindra Nath v. Shibu Prasad*, 1922 Cal. 166.

2. Where a claim is not investigated but an order is made to notify the claim at the time of auction, it is a summary decision under O. 21, r. 60, see *Lakshmi v. Kadiresan*, 41 M. L. J. 168=63 I. C. 431; *Saharabi v. Ali*, 44 M. L. J. 141=1923 Mad. 295. See also 41 Mad. 985.

3. A claim order though passed *ex parte* is equally final. *Ma Thein Tin v. Htoo*, 1923 Rang. 156.

4. The fact that no objection was preferred to a claim petition is not a consent to the claim and a suit will lie under O. 21, r. 63, C. P. C. See 28 I. C. 536.

5. Where the court rejects a claim under the proviso to r. 58 that it was unnecessarily delayed, then also the order is one against the claimant or objector and a suit lies to set it aside. *Gobardan Das v. Makund Lal*, 45 A. 438 = 74 I. C. 1024 = 1923 All. 435; *Kumara v. Thavurayya*, 48 M. L. J. 616 = 1925 Mad. 1113.

6. Where the attaching creditor withdraws the attachment, a suit does not lie.

7. The above rules apply to cases of attachment before judgment.

8. The regular suit that is instituted is held to be a continuation of the claim proceedings. See *Khairulla v. Seth Dhanrupmal*, 1925 Nag. 82.

9. Such suit has also been held to be in the nature of an appeal: See *Daulat v. Ramappa*, 90 I. C. 196.

10. Article 17 applies even after the property has been sold in execution proceedings provided that there is no relief for possession prayed for. *Manik v. Ramjas Agarwala*, 70 I. C. 342 = 1923 Pat. 152; But in *Dondo Sakharam v. Govinda Babaji*, 9 B. 20, though there was a prayer for possession, this Article was held to apply and a court-fee of Rs. 10 alone was collected.

**Attachment.**—Section 7 (viii) of the Act provides for suits to set aside an attachment of land or of an interest in land revenue. O. 21, or 60, Civil Procedure Code, provides for the investigation of claims and the raising of the attachment and under O. 21, r. 63 a suit can be filed to establish the right to any such property by any party against whom an adverse order is passed under r. 60. Where a property is attached the person affected thereby might or might not prefer a claim under r. 60. If he does, and if he does not succeed, then he can file a suit under r. 63. In that case, it is virtually a suit to set aside a summary order, for the summary order upheld the attachment and the same is sought to be vacated. But he is not bound to apply under r. 60 but can straightaway file a suit for a declaration of his title and have the attachment set aside, though such instances are rare for the obvious reason that the remedy under r. 60 is both inexpensive and expeditious. But still if a suit is straightaway filed without the invocation of the summary jurisdiction under r. 60, such a suit falls under s. 7 (viii) of the Act. It is curious to note that while s. 7 (viii) refers only to suits to set aside an attachment, there is no specific provision for suits to restore or to uphold an attachment. See further commentaries under s. 7 (viii) *supra*.

**Different kinds of reliefs.**—Where an unsuccessful claimant files a suit under O. 21, r. 63, Civil Procedure Code, the prayers are

worded in several ways. A declaration is prayed for that the plaintiff is the owner of the property, a declaration that the property should not have been attached in execution of a certain decree, that the order passed in claim proceedings should be vacated, that the court auction sale in pursuance of the attachment is not valid, as also the execution proceedings, that the property be reconveyed by the auction-purchaser to the plaintiff, that the property be delivered over to the plaintiff, etc. These prayers amounting to the establishment of title and possession have been construed by the several High Courts in various ways as falling under one or the other sub-paragraphs of s. 7. But the essence of such class of suits is this. A person's property is wrongfully attached, and his application to have it raised is not granted. That order is not appealable and conclusive unless a regular suit is filed within a year. The plaintiff files such a suit praying may be, for ever so many reliefs, all turning round the correctness of the summary order disallowing the claim. If that order is vacated, the other remedies follow as a matter of course and are simply consequential reliefs. It is only after this view has been stressed upon by the Privy Council in *Phul Kumari v. Ghanshyam Misra*, 35 C. 202, referred to below, that the conflict of decisions between the several High Courts as to the nature of suits under O. 21, r. 63, Civil Procedure Code and consequently the fee payable thereunder, can be said to have been set at rest. For a recent decision of the Madras High Court on the point, see *Arumuga Mudaliar v. Venkatachala Pillai*, 56 Mad. 716=64 M. L. J. 568=1933 Mad. 439.

**Court-fee.**—*Phul Kumari v. Ghanshyam Misra*, 35 C. 202 (P.C.) is the leading case on the subject and sets at rest several conflicting decisions on the point. The principles have been clearly enunciated therein. That was a regular suit to set aside a claim order. Their Lordships observed thus: "We are satisfied that there is in the statute no general or overriding reference to value. The terms of sub-section 1 of Article 17 contain no reference to value. \* \* \* Awards may be of the value of Rs. 10 or of Rs. 10,00,000; and yet no distinction is made. In short the statute, for good reason or bad, has dealt with certain actions irrespective of value; and the present is one of them." A fixed fee is leviable. The court-fee payable upon the plaint in a suit by a person whose claim to property attached in execution has been determined is Rs. 10 under this Article, whether the claim is dismissed for default or after investigation. *Satindra Nath v. Shiva*, 1922 Cal. 166=64 I. C. 713; See also *Maung Tun Thein v. Maung Sin*, 12 Rang. 670=1934 Rang. 332.

**Property dealt with in two orders.**—Where the same property is the subject of two different proceedings in two different suits, and adverse orders are passed against the plaintiff in both, the plaintiff has to pay separate court-fees under this Article in respect of each order. *Naraindas v. Pevanandbai*, 1935 Sind 129.

For valuation for jurisdiction see *infra*.

**Clause II. To alter or cancel any entry in a Register of the names of the proprietors of revenue-paying estates.**—In a suit to establish or disprove a right of occupancy the fee on a plaint or memorandum of appeal is leviable under Art. 5 of Schedule II and not under this Article. *Ratan Singh v. Khan Karan*, 40 A. 358 = 44 I.C. 609. A suit for a declaration that plaintiffs are occupancy tenants and that an entry in the Survey records describing them as tenure holders is wrong comes within this Article. *Tewari Kora v. Bhupat Mandir*, 50 I. C. 298.

**Bengal Tenancy Act.**—Suit under s. 106 of the Act is chargeable with the fee under this Article. *Chandicharan v. Manoranjan*, 18 I. C. 275. See also commentaries under s. 7 (iv) (c), *supra*.

### **The Madras amendment and topics thereunder.**

**(1) Public Trusts.**—Section 17, cl. (iii) of the Madras amendment provides for cases of relief under s. 14 of the Religious Endowments Act, 1863, or under s. 91 or 92 of the Civil Procedure Code, 1908.

**(2) Suit under the Religious Endowments Act.**—Suits under s. 14 of the Act are incapable of valuation. See *Veerasami Pillai v. Chokappa Mudaliar*, 11 Mad. 149 Note; *Muhammad Sirab Ul. Huf v. Imamuddin*, 10 All. 104. In Madras they are now specially provided for in Art. 17 (iii). In *Godasankara Valia Rajah Avergal of Punnathur v. The Board of Commissioners for Hindu Religious Endowments, Madras*, 56 M. L. J. 113, it was held that “the proper court-fee payable on an application under s. 84 of the Religious Endowments Act II of 1927 is that fixed by Art. 17-A (1) and not that fixed by Art. 17(1) Sch. II of the Madras Court-Fees Amendment Act, 1922. Art 17 of Sch. II of the Madras Court-Fees Amendment Act, 1922, referred to in Sch. II of the Religious Endowments Act, II of 1927, includes the whole of this Article consisting of its component parts. An application under s. 84 of the Religious Endowments Act, II of 1927, comes within Art. 17-A (i) of the Madras Court-Fees Amendment Act of 1922. It was also held that the Board of Commissioners for Hindu Religious Endowments is not a Civil Court within the meaning of Art. 17 (i) of the Madras Court-Fees Amendment Act of 1922.

**A contrary view.**—But the decision was not approved by another bench of the same court. *Sundara Aiyer v. The Board of Commissioners for Hindu Religious Endowments, Madras*, 52 Mad. 388 = 56 M.L.J. 373, where it was held that the court-fee payable in respect of an application under s. 84 (2) of the Hindu Religious Endowments Act is Rs. 15 under Art 17 (1) of the Madras Act. It was also held that the reference to Art. 17 in Sch. II of the Madras Hindu Religious Endowments Act does not include Arts. 17-A and 17-B of the Madras Court-Fees Amendment Act as Arts. 17-A and 17-B are not parts of Art. 17, but new sections.

*The Full Bench decision.*—Again the question came up in *Damodaran v. The Board of Commissioners for the Hindu Religious Endowments*, 58 M.L.J. 494, before Walsh, J., who referred the question to a Full Bench which answered thus: "The point referred to us for decision is, what is the proper court-fee payable in respect of an application filed under s. 84 (2) of the Madras Hindu Religious Endowments Act, (II of 1927) to modify or set aside a decision of the Hindu Religious Endowments Board under s. 84 (1) of the Act? Under Sch. II of the said Act the court-fee payable on such an application is the fee leviable on a plaint under Art. 17, Sch. II of the Madras Court-Fees Amendment Act of 1922. The Madras Court Fees Amendment Act contains three Articles, namely, 17, 17-A and 17-B. The short point for consideration is whether Arts. 17-A and 17-B must be read as parts of Art. 17 or as independent Articles. The view taken by Philips and Odgers, JJ., in *Godasankara Valia Rajah v. Board of Commissioners, Hindu Religious Endowments, Madras*, 56 M. L. J. 113, is that Arts. 17-A and 17-B must be read as parts of Art. 17. The learned Judges observe that when the whole Article is referred to, it must include its component parts and it cannot be read as meaning Art. 17 alone. The ground of their decision seems to be that Arts. 17-A and 17-B numbered as they are in the Act following Art. 17 with various sub-clauses must really be treated as clauses in Art. 17, as otherwise none of the clauses of Art. 17 will cover a case like the present. Strictly speaking, none of the sub-sections to s. 17-A or s. 17-B covers a case like the present as the application is to set aside an order of the Religious Endowments Board and not for any declaratory decree. This decision has been dissented from by Ramesam and Venkatasubba Rao, JJ., in *Sundara Aiyar v. Commissioners, Hindu Religious Endowments Board*, 52 Mad. 388. The learned Judges go into the matter in great detail and give their reasons for coming to the opposite conclusion. Ramesam, J., refers to the practice of numbering sections and sub sections of enactments and also discusses the way in which new provisions are introduced where the intention is to add a clause or a sub-clause and where the intention is to introduce a new section without altering the order or the numbers of the existing sections. The learned Judge also deals with the nature of the relief sought and the way in which it is described in Sch. II of the Act. He is of opinion that Art. 17 stands by itself, that Arts. 17-A and 17-B are really separate Articles and that they cannot be read together for the purpose of determining the court-fee. Venkatasubba Rao, J., also comes to the same conclusion as to the construction of Art. 17. We think that, in construing an enactment like the Court Fees Act, it is not for us to see what the legislature intended, if the meaning of the Article is plain. We agree with the view taken by Ramesam and Venkatasubba Rao, JJ., for the reasons given by them in their judgments. We may also add that the application contemplated in s. 84 (2) of the Madras Hindu Religious Endowments Act is one to modify or set aside a decision of the Board regarding the

application of the Act to the institution over which jurisdiction is claimed. Similarly in s. 76 (2) of the Act the alienation of immovable trust property is the subject of the decision of the Religious Endowment Committee and the application to the court is to modify or cancel an order of the Board or Committee granting or refusing sanction. These applications are analogous to a regular suit filed by an unsuccessful claimant. The observations of the Privy Council in *Phul Kumari v. Ghanshyam Misra*, 34 Cal. 202, may be considered in dealing with a matter like the present. We prefer to follow the decision in 52 Mad. 388 and answer the question referred to us that the court-fee payable on an application like the present is the court-fee leviable under Art. 17 (i), that is Rs. 15."

**Clause III. To obtain a declaration where no consequential relief is prayed for.**

**Madras Amendment.**—This is provided for in Article 17 (iii) of the main Act and the same provision is found in Article 17-A (i) of the Madras Amendment. Of course in Madras it also depends on the forum in which such suit is instituted being Rs. 15 if instituted in a District Munsiff's Court or the City Civil Court and Rs. 100 if instituted in a Sub Court or District Court.

**Sub Court Cochin (Br.)**—According to the Madras Article the fee due for a plaint filed in District Munsiff's Court is Rs. 15 and the minimum fee due for a plaint in a Subordinate Judge's Court, is Rs. 100. A plaint in a suit coming within this Article and filed in the Subordinate Judge's Court at Cochin where there are no District Munsiffs' Courts, would be therefore chargeable with a fee of Rs. 100 even though the value of the suit is not over Rs. 3,000. In order to remove this hardship arising from the accidental circumstance that the Sub Judge's Court at Cochin is a District Munsiff's Court and a Sub Court rolled into one, a Notification has been issued by the Local Government (G. O. No. 3279 dated 5th September 1932) by which the fee payable is limited to Rs. 15 in a declaratory suit, where the value is less than Rs. 3,000.

**Declaratory Suit.**—It is in many cases very difficult to clearly define what is a suit for simple declaration and what is one with consequential reliefs. There are many cases where by dexterous drafting of a plaint the real nature of the relief is covered up and what is the primary and what is the auxiliary relief is not made apparent. But the question of court-fee must be decided on the plaint and the decision is not affected by the question whether the suit is maintainable under s. 42 of the Specific Relief Act or by *any action subsequently taken by the plaintiff to obtain an injunction* otherwise than by an amendment of the plaint. Though it is open to the court to say that the plaintiff has really asked for a consequential relief though he has tried to conceal it by casting the reliefs in a particular form, it is not open to the court to say that the plaintiff should have asked for a

consequential relief and should have paid the proper court-fee as in such a suit. He is clearly entitled to have the case made by him in the plaint tried by the courts. The plaintiff cannot be deemed to have asked for consequential relief when he studiously refrains from asking it. *Radakrishna v. Ram Narain*, 931 All. 369; *Brij Gopal v. Suraj Karan*, 1932 A. L. J. 466=1932 All. 560, *Mahomed Ismail v. Liyaqat Husain*, 140 I. C. 191=1932 A. L. J. 165=1932 All. 316; *Ishwar Dayal v. Amba Prasad* 1935 A. L. J. 498=1935 All. 667; *Adeshwar Prasad v. Badami Devi*, 148 I. C. 908=11 O.W.N. 617=1934 Oudh 212. Thus a suit for declaration that the entire family property in the hands of the plaintiff as the head of the joint family belonged equally to the plaintiff and the male defendant and that certain documents executed by certain deceased members of the family did not affect the jointness of the family, falls under this Article. The court need not go into the question whether the suit is bound to fail for not having prayed for consequential relief. *Brij Gopal v. Suraj Karan*, 1932 A. L. J. 466=1932 All. 560. So also a suit by the plaintiff for declaration that the hypothecation bond executed by his father in favour of the defendant is unenforceable and that the family property mortgaged by that deed is not saleable in execution of an *ex parte* decree for sale obtained by the defendant on the basis of that mortgage, *Ishwar Dayal v. Amba Prasad*, 1935 A.L.J. 498=1935 All. 667. The entire relief is one declaratory relief, as on the date of the suit, the hypothecation bond has merged in the decree, and the relief for a declaration that the family property is not saleable in execution is not a consequential relief within s. 7 (iv) (c). *Ibid.* See also *Rattan Lal v. Allahabad Bank, Ltd., Lahore*, 1935 Lah. 122. The various forms of action have been set out and discussed under s. 7 (iv) (c) *supra*. See commentaries thereunder.

### **The following cases have been treated as suits for bare declaration.**

1. *Summary order*.—Suit for a declaration that the plaintiff's property is not attachable in execution of a certain decree. This comes under the heading of a suit to set aside a summary decision. *Govind Nath v. Gajraj*, 13 A. 389.

2. *Binami transaction*.—Suit for a declaration that plaintiff is true owner of the decree and for a direction to the ostensible decree-holder to transfer the decree to the plaintiff is only a suit for declaration, the other prayer being only a surplusage. *Ganesh Lal v. Beni Pershad*, 9 I. C. 673.

3. *Recovery of money*.—Where money is sought to be recovered from a party who is ready to pay it to the rightful owner, the suit is deemed to be one for a bare declaration only. *Mt. Uttan Devi v. Dina Nath*, 1923 Lah. 359=75 I. C. 774. Where the suit comprised a claim for declaration of a charge on certain property for a sum of money which the plaintiff had to borrow for her maintenance, it was held that the claim was really one for arrears of mainten-



ance. *Mt. Udobai v. Ram Autar*, 1934 Lah. 150. As to recovery of compensation money invested in Bank under the direction of court under s. 32 of the Land Acquisition Act, see *Thammayya Naidu v. Venkataramanamma*, 55 Mad. 641 cited under the heading "*Recovery of property in custodia legis*".

4. *Decree*.—Suit to set aside decrees. *Sagaraji Rao v. Smith*, 20 B. 736. A relief for the cancellation of a decree is not a declaratory relief only. The effect is to render the decree void and incapable of execution and to free the plaintiff from all further liability under it. *Kalu Ram v. Babu Lal*, 54 All. 812 = 1932 All. 485 (F. B.). In this case the suit claiming such a relief was held to fall under Sch. I, Art. 1, court-fee being payable on the value of the decree. *Ibid.* See also cases cited under s. 7 cl. (iv) (c).

5. *Declaration about decree*.—A suit by a party for a declaration that a decree is void, and inoperative. *Mt. Nihal Devi v. Rai Chuni Lal*, 73 I. C. 767 = 1923 Lah. 373; *Hakim Rai v. Isher Das*, 8 Lah. 531 = 1927 Lah. 499 = 102 I. C. 46; *Sri Krishnachandra v. Mahabir Prasad*, 1933 A. L. J. 673 = 1933 All. 488 (F. B.). Or not binding on the plaintiff. *Shihan v. Abdul Alim Abed*, 1930 Cal. 787.

6. *Joint family property*.—Suit for declaration that certain property is joint family property. *Siva Ram v. Narain Das*, 4 A. W. N. 11.

7. *Alienation*.—A suit by the son of a Zemindar that the alienations made by the father are not binding on the plaintiff. *Narayana v. Muttaya*, 7 M. 134. Suit by a coparcener of a joint Hindu family that certain alienations made by another coparcener are not binding on the plaintiff. *Sham Das v. Mahant Charan Das*, 78 I. C. 722; See also *Harbagwan v. Amar Singh*, 83 I. C. 332; *Munshi Mahton v. Lachman Lal*, 10 Pat. L. T. 545.

8. *Two declarations*.—Where there were two declarations asked for, and the second was a redundant prayer it was held not to be a suit for a declaration with consequential relief. *Mahabir Prasad v. Shyan Behari Singh*, 3 Pat. 795 = 80 I. C. 655 = 1925 Pat. 44. See also *Lakshmi Narain v. Dip Narain Rai*, 55 All. 274 = 1933 A. L. J. 311 = 1933 All. 350, where the second declaration was held to be chargeable to another fixed fee and not as a consequential relief under s. 7 cl. iv (c). A suit for declaration that two wills executed by the deceased on different dates are invalid is chargeable to fixed fees separately as regards each of the wills though the property dealt with by both the wills was the same. *Veeramma v. Venkataramamma*, 68 M. L. J. 280.

9. *Joint ownership*.—Suit for declaration of joint ownership. *Malaiyya Pillai v. Thirumalai Perumal Pillai*, 21 M. L. J. 1022.

10. *Possession*.—Suit for declaration and possession where possession was with an officer of Government, viz., the Collector. *Brojendra Kishore v. Sarojoni Ray*, 20 C. W. N. 481; See contra

*Goswami v. Gridharji*, 20 All. 120, or where it is with a Receiver, *Vedhanayaga Mudaliar v. Vedammal*, 27 M. 591. See also cases under heading "Recovery of property in *custodia legis*."

11. *Reversioner's suit*.—Declaration by a reversioner that a will is not binding. *Hakim v. Mt. Mahtab Kour*, 109 P. R. 1893.

12. *Injunction*.—Suit by a plaintiff that he is the next heir to an inalienable estate, which the then holder was about to sell and for a decree preventing him from selling it, was held to be for declaration and consequential relief and not one for a simple declaration. *Pratab Singh v. Nand Lal*, 1928 Nag. 243=100 I. C. 163.

13. *Setting aside deed*.—A Full Bench of the Allahabad High Court has held that a suit for the cancellation of an instrument under s. 39, Specific Relief Act falls neither under s. 7, cl. (iv) (c) nor under Art. 17 (iii) of Sch. II but falls under the residuary article Sch. I Art. 1. *Kalu Ram v. Babu Lal*, 54 All. 812=139 I. C. 32=1932 A. L. J. 684=1932 All. 485 (F. B.). See also *Suraj Ket Prasad v. Chandra*, 1934 A. L. J. 955=1934 All. 1071; *Akhlaq Ahmad v. Mt. Karam Ilahi*, 1935 A. L. J. 133=1935 All. 207, where it has been held that even a suit for declaration falls under Art. 1 of Sch. I when it implies a prayer for cancellation. While in cases where a declaration alone is sought, a stamp of Rs. 10 is sufficient, in a case under s. 39 of Act I of 1877 (Specific Relief Act) in which not only is a declaration sought, but it is further asked, that the document shall be delivered up, cancelled and its registration set aside, an *ad valorem* fee must be paid. *Kuber Saren v. Reghuber*, 5 Luck. 235=1929 Oudh 491. Where the plaintiff prays for a declaration that a deed executed by him is ineffective and inoperative as against him, on the ground that he was made to execute it because of coercion, undue influence and fraud exercised upon him alleging that he is still in possession of the properties covered by the deed falls under this Article. *Ramnaq Ali v. Imamunnessa*, 138 I. C. 147 (Oudh). See also *Pateraji v. Rdhika Bakhsh*, 142 I. C. 699=1933 Oudh 127; *Abdul Samad Khan v. Anjuman Islamia*, 1933 A. L. J. 1537. Where the plaintiff who was not a party to a deed sued to have it declared that a deed was null and void and there was no prayer for the document being delivered up after cancellation, it was held that the suit was for a mere declaration and was leviable to court-fee on that basis. *Daya Shanker v. Mahomed Ibrahim Khan*, 141 I. C. 798=1933 Oudh. 116. Where the plaintiff filed a suit alleging that he was a minor at the time of the execution of the mortgage deed by him and that therefore the mortgage deed was void as against him, it was held that all that was necessary for the minor was to ask that the document be declared to be void as against him and that no prayer for consequential relief as to setting aside the document was necessary and that the suit need not be treated as involving such a prayer. *Yu Hock Tun v. Yu Hock*, 11 Rang. 66=1933 Rang. 109. So also where the plaintiff alleging that a certain deed was forged and that in spite of his objection the Registrar

directed its registration, sues for declaration that the instrument may be declared to be a forgery, a fixed fee is sufficient under this Article as he cannot be said to be a party to the instrument *Nagabhushanam v. Venkatappayya*, 68 M. L. J. 95=41 L. W. 90=1935 Mad. 203. Where a Hindu son suing for partition alleged that a certain mortgage executed by his father's agent was not binding on him and prayed that he might be granted a partition free of that mortgage, it was held that the prayer was in effect for a declaration that the mortgage was not binding on the plaintiffs' share and that court-fee was payable under Art. 17-A (1) of Sch. II (Mad.) *Secretary of State v. Lakhanna*, 64 M. L. J. 24=141 I. C. 80=1933 Mad. 430. See also *Perrajin v. Subba Rao*, 41 L. W. 405=68 M. L. J. 376 in which it has been held that where in a suit for partition by a Hindu coparcener, certain creditors are impleaded as parties and there is a prayer for a declaration that the debts alleged to be due to them were not binding on the share of the properties to be allotted and delivered to the plaintiff, a separate court fee of Rs. 15 must be paid in respect of each debt sought to be declared not binding on the plaintiff's separate share. If such a suit is filed in a Sub-Court or a District Court, the fee payable in respect of each debt would be Rs. 100 and cases may arise where the fee may exceed or be out of all proportion to the amount of debt in question. In a suit by a Hindu son for partition in which he prays that certain alienations made by the Official Receiver, in whom the interest of his father had vested on the latter's insolvency, may be set aside as not binding on him, it is sufficient for the plaintiff to obtain a mere declaration that the alienations are not binding. Art. 17-A (1) applies to such a relief. The fact that the alienations were for discharging antecedent debts of the father or that they are *prima facie* binding on the plaintiff does not make any difference as regards the court-fee payable. *Annamalai Mudaliar v. Kistappa Mudaliar*, 67 M. L. J. 858. A suit for a declaration that a registered deed does not affect the plaintiff's title is one clearly made under the provisions of s. 39 of the Specific Relief Act and such suit is a suit for a declaratory decree with consequential relief. The relief claimed is really the same whether the plaintiff purports to ask that a document should be adjudged voidable or declared not to affect the plaintiff's title or be set aside or cancelled. *Babu Rao v. Balaji Rao*, 1929 Nag. 71. Where a reversioner first filed a suit against the widow of the last owner and alienees from him impeaching the alienations as nominal and challenging the genuineness of a will left by him, and later got a surrender from the widow and converted his suit, with the leave of the court into one for possession, it was held that the plaintiff was bound to seek a declaration in respect of the alienations and had to pay court-fee thereon and that the relief of possession was not consequential on the declaration, but a separate relief leviable to court-fee under s. 7 cl. v. *Ramakrishnayya v. Seshamma*, 68 M. L. J. 369=41 L. W. 488=1935 Mad. 345.

A suit for declaration that a deed executed by the defendant is fictitious and void and that the property covered by it is capable of

being attached and sold in execution of the plaintiff's decree is purely a declaratory suit without consequential relief, as the second declaration is implied in the first and is not a consequential relief. *Ram Dayal v. Baldeo Prasad*, 130 I. C. 344 = 1931 Oudh 72.

14. *Declaration about title to property*.—A suit for declaration that a certain property belongs to the plaintiff and is not liable to be sold in execution of a mortgage decree passed in a suit to which the plaintiff was not a party does not involve any consequential relief and comes within this Article. *Sri Ram v. Mathura Prasad*, 1925 Oudh. 500.

15. *Declaration about royalty*.—A suit for declaration that a plaintiff is liable to pay *Achu palisha* or royalty at a rate lower than that claimed by the defendant does not fall within S. 7, Cl. 1 or 4 (c). It is simply a suit for a declaratory decree without any consequential relief. *Rayorappankutti Nambiar v. Kalliyat Nambiar*, 46 M. L. J. 377 = 1924 Mad. 621.

16. *Third party in possession*.—Where the property is in the possession of a third party who was a tenant under the plaintiff's predecessor in title, a suit for declaration by the plaintiff against the defendant, who is not in possession, but throws obstacles in the way of the plaintiff getting attornment from the tenant is maintainable and the plaintiff is not bound to sue for possession. *Gian Chand v. Bhagwan Singh*, 32 P. L. R. 745.

**Reduction of maintenance**.—A suit for reduction of rate of maintenance awarded under a previous decree on the ground of change of circumstances is not a "suit for maintenance" within s. 7 (ii) nor a "suit for cancellation of decree" within s. 7 (iv-A) but a suit falling under Art. 17-B (Mad.) (corresponding to Art. 17 (3) of the main Act). *Rajammal v. Thyagaraja Ayyar*, 69 M. L. J. 202 = 42 L. W. 42 = 1935 Mad. 655.

**Priority**.—Where one of the defendants in a mortgage suit appeals, claiming that he is entitled to priority over the other defendants, who were adjudged prior mortgagees by the lower court, the relief sought is not declaratory and does not come within Art. 17 (iii), and *ad valorem* fee is payable, *Kundan Lal v. Duli Chand*, 54 All. 347 = 1932 A. L. J. 45 = 1932 All. 221. See also under Art. 1 of Sch. I. Where in a suit for sale on a mortgage, in which some puisne mortgagees are impleaded, a decree is passed ordering that the balance of the sale proceeds remaining after paying off the plaintiff mortgagee should be paid to the puisne mortgagees and the surplus if any should be given to the mortgagor, and the mortgagor appeals against the portion of the decree in favour of the puisne mortgagees, *ad valorem* court-fee is payable on the amount due on the mortgage and not a fixed fee. *Kharaiti Ram v. Chuni Lal*, 146 I. C. 1003 = 1933 Lah. 954.

### **Declaration and consequential reliefs.**

1. *Exoneration from liability*.—When from a decree for recovery of money passed against a Hindu father and his son on a

mortgage bond the latter appeals urging that his share of the property is not liable for the debt the relief sought is not declaratory, but court-fee is payable *ad valorem* on the market-value of the share or the decree amount whichever is less, and not on ten times the revenue. *Sarangapani Ayyangar v. Pichu Ayyar*, 1931 Mad. 710.

2. *Void decree or document*.—Suit for declaration that a decree is void as having been obtained by fraud and for other reliefs was held to be a suit really for declaration and injunction. *Bua Ditta v. Ladha Mal*, 54 I. C. 833. See also *Sageriji Rao v. Smith*, 20 B. 736; *Bagala Sundari v. Prosanna Nath*, 35 I. C. 797; *Zinnatunessa v. Girindra Nath*, 30 C. 788. In a suit for declaration that a certain deed was a forgery, a prayer for refund of costs incurred in opposing its registration before the Registrar, is an additional and not consequential relief, and must bear *ad valorem* court-fee. *Nagabhushanam v. Venkatappayya*, 68 M. L. J. 95=41 L.W. 90=1935 Mad. 203.

3. *Claim to Ayo*.—An *ayo* is a hereditary right—to apply to Government for grants of oil well sites in certain areas known as “reserves” and to receive such sites from Government. The question whether a person has succeeded to an *ayo* is one of status, and however valuable it may be, it does not vest any specific property in the person. Hence the fee payable is only under clause (iii). *Na Su Twin v. Fatima Bibi*, 1926 Rang. 184=98 I. C. 196.

4. *Order under s. 146 Criminal Procedure Code*.—Where a magistrate passes an order under s. 146, Criminal Procedure Code, a person claiming the property need sue only for a declaration. But it will be otherwise if the magistrate has interfered with the possession of defendants because an emergency has arisen and decides that retention of the sale proceeds is unnecessary and orders them to be handed over to defendants. Then he is holding the same on behalf of the defendants. *Ad valorem* fees calculated on the value of the subject-matter must be paid. *Sakharam v. Tukaram*, 1927 Nag. 316=103 I.C. 351.

**Recovery of property in Custodia Legis**.—When the property is not in the possession of the defendant but in *custodia legis* with the Collector, Magistrate or Receiver, the suit comes within this Art. and not under Sec. 7, cl. v. The plaintiff had in a previous suit been appointed Receiver in guardianship proceedings of the property of a minor, who was since murdered. The plaintiff then brought the suit in question against the defendant for a declaration of his right to the property without asking for possession. It was held that the property being in *custodia legis* in the hands of the Receiver, an officer of the court, and it being a mere accident that that officer was the plaintiff himself, the plaintiff could ask for a mere declaration without any consequential relief. *Vedanayaga Mudaliar v. Vedammal*, 27 M. 291. A suit for declaration that the plaintiffs are entitled to certain sum of money held in court deposit by the Receiver appointed under s. 146, Cr. P. Code falls under this Article and court-fee is payable as on a mere declaration. *Jurawan Singh v. Ram Sarekh Singh*,

12 Pat. 261=1933 Pat. 224. Where the money is in court deposit, the plaintiff cannot frame the suit regarding it as one for declaration and consequential relief. A relief for injunction restraining the defendants from applying for the payment of the sum is both unnecessary and superfluous. The proper relief that should be prayed for is one for declaration alone and court-fee that is leviable is one under Art. 17-A of Sch. II. *Ponnuswami Nadar v. The Secretary of State for India in Council*, 68 M. L. J. 327=41 L. W. 702=1935 Mad 318.

On a reference by the Land Acquisition Officer, the District Judge held that a Hindu widow was entitled to life-interest in the compensation money awarded and ordered under Sec. 32 of the Land Acquisition Act that the money should be deposited in the Imperial Bank. A rival claimant appealed to the High Court, claiming that the compensation money was payable to him alone. It was held (Wallace and Cornish, JJ.) that the possession and the control of the compensation money being in *custodia legis*, a mere declaration by the High Court with a direction that the money was not any longer to be in trust for the widow but was to be handed over to the appellant was sufficient and court-fee was payable under this Article as for a mere declaration and not *ad valorem*. The case in *Mahalinga Kudumban v. Theetharappa Mudaliar*, 56 M. L. J. 387, was distinguished on the ground that there the successful claimant had not the property held in trust for him by the court, but was entitled to immediate payment, and so *ad valorem* fee was payable in the appeal there. *Thammayya Naidu v. Venkataramanamma*, 55 Mad. 641=62 M. L. J. 541. No doubt if in this case any interest on the principal had been paid out to the widow, the appellant if he sought to recover that also would have to pay *ad valorem* fee on that, but there was no such claim. See also *Girdarilal Ratanlal v. Palaniappa Mudali*, 1929 Mad. 572 and *Mt. Uttam Devi v. Dina Nath*, 1923 Lah. 359, where the suit moneys were in a bank, which was willing to pay them to the rightful owner, and the defendants were not in possession of them. In *Shidappa Venkatrao v. Rachappa Subba Rao*, 36 B. 628 (638) subsequently affirmed on appeal in 43 B. 507 (P. C.) where some of the suit properties were in the possession of the Collector as agent of the Court of Wards and the plaintiff had asked for an injunction as well as a declaration against the defendant, it was held that the properties being in the possession of the Collector, it was not necessary for or allowable to the plaintiff to ask for an injunction. See also *Saburi Panday v. Ram Khelavan*, 1924 Pat. 385, where the property of a lunatic was in the custody of the defendants as managers appointed by the court, and the heir of the lunatic sued for a declaration that he was entitled to the property, and it was held that the suit was proper, that the plaintiff need not pray for possession and that a court-fee of Rs. 10 was payable under Sch. II, Art. 17.

**Reversioner's claim to have the compensation money deposited in court.**—An award having been made in favour of an

alienee from Hindu widow in respect of lands sold by her and acquired by the government compulsorily, the reversioners of the widow's husband claimed the proceeds on the ground that the alienation was not legally binding on them and prayed that the amount should not be paid to the alienee but might he invested under s. 32 of the Land Acquisition Act. The claim was disallowed and they appealed. It was held that the appeal was not one under s. 8 of the Court-Fees Act, but fell under Art. 17 (iii). *Rash Behari Sanyal v. Gosto Behari Goswami*, 39 C. W. N. 110=60 C. L. J. 216.

**Section 145 Crl. Pro. Code.**—An order under this Section maintains the successful party in possession and does not take the property in *custodia legis*. The plaintiff has therefore to sue for possession and not for mere declaration. *Jhumak Kampti v. Debulal Singh*, 22 C. L. J. 415. But it will be otherwise if an order of attachment has been made under Sec. 146. *Malaiya Pillai v. Thirumalai Perumal Pillai*, 21 M. L. J. 1022; *Raja of Venkatagiri v. Isaka Pillai*, 26 M. 410; *The Administrator General of Bengal v. Bhagwan Chandra Roy*, 15 C. W. N. 758. In *Panna Lal Biswas v. Panchu Guidas*, 26 C. W. N. 462, it was held that the Magistrate having taken possession of the property under attachment, the defendant's possession was determined and the property was in legal custody and that therefore the suit though framed as one for possession could not be treated as such. See also *Brojendra Kisore Ray Chowdhury v. Sarojini Ray*, 20 C. W. N. 481. But if the property attached has been put in the possession of a stranger by the Magistrate, the suit must be for recovery of possession. *Nisar Ali v. Adebuddishana*, 16 C. W. N. 1073.

**Bengal Alluvial Lands Act.**—An appeal against an order of the Civil Court on a reference by the Collector under S. 5 of the Bengal Alluvial Lands Act comes within this Article. Under that Act when the Collector thinks that a dispute regarding the alluvial land is likely to cause a breach of the peace, he may at once attach the land and take proper steps to refer the matter of the different claims to the Civil Court. The land is thus in the possession of the law by reason that it is in the possession of the Collector. The duty of the Collector is to give possession to the party declared to be entitled to it. The reasoning given in the cases with reference to suits under S. 146, Criminal Procedure Code, is applicable to such a case. *Basanta Kumar Biswas v. Prasanna Kumar Guha*, 58 C. 710.

**Plaint or Memorandum of appeal in a suit.**—According to the wording of this Article, when strictly interpreted, the court-fee chargeable on a memo. of appeal is the same fixed fee as in the suit. Whatever be the subject-matter of the appeal, the criterion regarding the chargeability of court-fees on the memo. of appeal is whether the suit comes within these Articles. See *Jyoti Prasad Singh v. Jogendra Ram*, 56 Cal. 188=32 C. W. N. 1105, where the suit being for partition, court-fee was paid on the plaint under Art. 17 (vi), and it was held that on the memo. of appeal also the same fee was chargeable though

its subject-matter related only to the costs of the suit. The decision in *Harbhagwan v. Amar Singh*, 5 Lah. 137, is to be explained on this principle. *Neko Tewari v. Kishen Prasad*, 3 Pat. 640, does not offend against this principle, as there the suit was practically for declaration alone, the claim for temporary injunction having dropped out in the course of the suit and being also not legitimately a part of the plaint, as it has to be sought by an interlocutory petition. See observations in 54 All. 553 at 555. This view leads to the logical result that where the suit does not come within this Article, but under Sec. 7 for purpose of court-fees, then the memorandum of appeal in such a suit even though its subject matter relates only to declaration or any other relief mentioned in this Article, cannot be charged with the fixed court-fee mentioned here, but has to be charged *ad valorem* under Art. 1 of Sch. I. See *Kundan Lal v. Duli Chand*, 54 All. 347 and *John v. Suraj Bhan*, 54 All. 553. But see contra, *Girijanand v. Sailajanand*, 23 Cal. 645, *Rup Chand v. Fateh Chand*, 33 All. 705 and several other cases, where it was held that the memorandum of appeal was chargeable under this Article even though the suit did not come under it. These views appear to be irreconcilable, and the position seems to require legislative interference.

**Appeal in declaratory suit.**—Where in a suit by a reversioner for declaration that a release deed executed by the 5th defendant, the widow in favour of defendants 1 to 4 would not be binding on the ultimate reversioners, the trial court passed a decree declaring that the ultimate reversioners would not be bound by the release deed but that they would be bound to pay defendants 1 to 4 a certain amount which had been spent to the benefit of the last male holder's estate, and the defendants 1 to 4 appealed impugning the declaratory decree and also contending that in any event the decree should be made conditional on payment by the ultimate reversioners of a larger amount than that awarded by the Trial Court, it was held that the appellants were bound to pay court-fee under Art. 17-A (corresponding to Art. 17 (iii) of the main Act) only in respect of the declaration sought to be avoided and not also on the amount claimed by them in the alternative, *Palaniappan Chettiar v. Settichi*, 63 M. L. J. 822=36 L. W. 828.

**Cross-objection in a declaratory suit.**—The omission of the words "cross-objection" from Sch II, Art. 17 (iii) is a mere clerical error and it is no doubt intended by a memorandum of appeal a cross objection should also be included. A cross objection in a declaratory suit where no other relief is asked for, does not require *ad valorem* court-fees. There is no essential difference from the point of view of court-fee between a cross-objection and an appeal and there is no reason why a person who files a cross-objection should have to pay *ad valorem* court-fee, whereas if he filed an appeal, instead of a cross-objection he will not have to pay that court-fee. *Surendra Singh v. Gambhir Singh*, 152 I. C. 196=1934 A. L. J. 743=1934 All. 728. But there is a conflict of decisions on the point as to which see the cases cited under Sch I, Art. 1.



### Clause IV. To set aside an Award.

**Scope.**—This refers to a suit to aside an award when the reference is not made through Court: *Kasturi Chetti v. Deputy Collector of Bellary*, 21 M. 269. This comes under Art. 17-A of the Madras Amendment.

**Award.**—The intrinsic value of the suit has nothing to do with the fee payable in a suit to set aside an award. *Phul Kumari Dasi v. Ghanshyam*, 35 C. 202. In Madras, however, the court-fee payable varies with the value of the subject matter of the suit.

**Land Acquisition Cases.**—Where the award is given in a Land Acquisition case, s. 8 being a special provision over-rides this provision and the fee is payable under s. 8 only. *Kusturi Chetty v. Deputy Collector of Bellary*, 21 M. 269. Where the Secretary of State appeals against the decision of the District Judge awarding compensation urging that the amount awarded is too high, Sch I, Art. 1 will apply and an *ad valorem* fee is payable even then. *Secretary of State for India v. Baij Nath*, 138 I. C. 199=1932 Oudh 224. See the commentaries under s. 8 *supra*.

### Clause V. Suit to set aside an adoption.

**The wording of the clause.**—As usual the wording of the Act is behind the times and while the words 'to set aside' were borrowed from the Indian Limitation Act, 1859, the Court-Fees Act has stagnated and there was no amendment even after the Limitation Act underwent a thorough alteration in 1877 and 1908. The wording of the present Article of the Limitation Act provides for a 'suit to declare that an alleged adoption is invalid or never in fact took place.'

**Madras Amendment.**—The Madras Amendment has amplified this further by providing for a suit 'to obtain a declaration that an alleged adoption is invalid or never in fact took place or to obtain a declaration that an adoption is valid.' In view of this amplification, there does not seem to be any sufficient justification for a separate clause for this class of declaratory suit as they could as well come under cl. (1) of Art. 17-A regarding a suit for a bare declaration. Further in Madras the fixed fee leviable is in a way made dependent on the value for jurisdiction. Thus the larger the value for jurisdiction, the higher the fixed fee leviable. As to how such suits are to be valued for purposes of jurisdiction see *infra*.

**Different types of suits regarding Adoption.**—There are three relevant provisions of the Act to be considered in this connection. There is s. 7 clause (iv) (c) which relates to declaratory suits where there is prayer for a consequential relief, next there is Article 17 clause (iii) which provides for a declaratory relief pure and simple where no consequential relief is prayed, and thirdly there is this clause (v) for a suit to set aside an adoption.

In the first place all these various types of suits regarding adoption may be divided into two broad divisions *viz.* (a) cases where, while praying for a relief relating to an adoption the suit refers to a right to property, may be, as a consequential relief and (b) where the relief is as to the status of the alleged adopted person.

The law on the question could be stated thus ;

(i) Where the relief is not confined to the question, *viz.*, the validity or otherwise of the adoption and adoption alone, but relates also to immoveable property, then it is a suit for a declaration with consequential relief and comes under s. 7 clause (iv) (c). *Ugramohan v. Lachmi Prasad*, 1923 Pat. 100 = 56 I. C. 422; *Ganpat Rao v. Lakshmi Bai*, 43 I. C. 64.

(ii) A suit to set aside an adoption without any other or further relief falls under Article 17 clause (v) though there is a question of title to property involved but no relief therefor is prayed. *Ganpat Rao v. Lakshmi Bai*, 43 I. C. 64.

(iii) But any other declaratory suit regarding an alleged adoption (subject to item 2 *supra*) and having no relation to any title to immoveable property or otherwise is a suit for a declaration pure and simple without consequential relief and the fee leviable is under Article 17 clause (iii). Of course this is subject to the local amendments of the Act, where in Madras for instance the suits catalogued under Article 17-A (iii) are

(i) to obtain a declaration that an alleged adoption is invalid

(ii) or never in fact took place or

(iii) to obtain a declaration that an adoption is valid.

All these classes of cases could not therefore in Madras be relegated to Art. 17-A (i) regarding pure and simple declaration but there is no difference in court-fee payable under either of those clauses.

## **Clause VI. Suits where it is not possible to estimate at a money value the subject-matter of the suit.**

**Scope of the clause.**—Article 17 has been split into several Articles in Madras and Bombay. In Madras the uniform fixed fee of Rs. 10 provided in the main Act has been replaced by different fees depending on the forum where the suit or appeal is laid.

This clause provides for the cases where the nature of the subject-matter of suit is such that the same could not possibly be estimated at a money value. The subject-matter must be incapable of valuation. The fact that it is difficult to assess the value or the estimate could only be approximate as in a suit for accounts could not bring the suit within this Article. *Banwari Lal v. Daya Shanker*, 1 I. C. 670; *Trinayani Dasi v. Krishna Lal*, 39 C. 906 = 14 I. C. 724; *Ramakrishna Reddi v. Kota Reddi*, 30 M. 96 = 16 M. L. J. 458. See also *Sabir Husain v. Farzand Hasan*, 54 All. 608 = 138 I. C. 622 = 1932 All. 406 (Appeal

seeking to render certain property in the hands of the defendant liable for a certain money-claim.) This clause only applies to a case where it is established that it is not possible to ascertain even approximately the money value of the subject-matter in issue. Where in a suit for account, a decree is passed considerably in excess of the value given by the plaintiff, and the defendant appeals against the decree, the contingency that the plaintiff may not pay the court-fees on the excess amount decreed in execution does not alter the value of the decree against the appellant, and make it incapable of valuation. *Kailas Chandra Das v. Narayan Chandra Das*, 152 I. C. 97 = 59 C. L. J. 447 = 1934 Cal. 786. Of course as this is not the only place where suits which might fall under that category, are provided for, there is the further provision that the Article is to apply only to cases which are 'not otherwise provided for by the Act.' In *Gajendra Nath Saha Chowdhury v. Sulochana Chowhhurani*, 39 C. W. N. 131, it has been held that this clause should be very strictly interpreted and that it cannot be invoked when a suit is otherwise provided for.

"Courts have had to consider the exact scope of the clause 'it is not possible to estimate at a money value the subject matter' occurring in old Art. 17 (6) corresponding to the present Art. 17-B (Mad.) and difference of opinion necessarily arose having regard to the nature of the expression used in that clause. With reference to a plaint filed under section 77 of the Indian Registration Act, *Benson and Bhashyam Aiyangar, JJ.*, held in *Pydal Nambiar v. Kannan Nambiar*, 12 M.L.J. 87, that the subject-matter was manifestly capable of valuation, and the learned Judges directed that *ad valorem* court-fee should be levied. In the case reported in the very next page of the same volume *Savari-muthu Pillai v. Alagiam Pillai*, 12 M.L.J. 88, *Davies and Moore, JJ.*, held that it was impossible to give any valuation in the ordinary sense, in respect of such suits; and they held that the case came under the old Art. 17 (6) corresponding to the present Art. 17-B. It is not surprising in this state of circumstances that the matter came before a Full Bench of the High Court, and in *Ramu Aiyar v. Sankara Aiyar*, 31 M. 89, the Full Bench, following the decision of *Garth, C. J.*, in *Jantoo v. Radha Canto Doss*, 8 C. 515, held that in view of the wording of the Act the proper view would be to say that it is not possible to estimate at a money value, the subject matter in such suits." *Per Anantakrishna Ayyar, J.*, in *Vaithilinga Aiyaswami Aiyar v. The District Board of Tanjore*, 52 M. 972 = 57 M. L. J. 510. After reviewing the case law with reference to some other classes of suits, the learned Judge holds that an appeal preferred by a ryot in a suit filed by him under s. 112 of the Madras Estates Land Act is a case where it is not possible to estimate at a money value the subject-matter in dispute within the meaning of this Article, *Ibid.*

**Tank bed.**—Tank bed has no market-value and a suit to eject certain tenants from such land which they are alleged to have encroached upon for the purpose of cultivation has been held to come under this Article (Art. 17-B in Mad.) See the case of *Manikkam*

*Pillai and Nagasami Ayyar*, 67 M. L. J. 688=152 I. C. 679=1934 Mad. 714 cited and commented on under s. 7 cl. (v).

**Temple.**—It has been held that a temple can have no market-value and a suit for recovery of possession of same comes under this Article. *Rajagopala v. Rama Subramani*, 18 L. W. 326=1924 Mad. 19. See also *Parsothamanad Giri v. Mayanand Giri*, 54 All. 869=1932 A. L. J. 777=1932 All. 593.

**Religious and Charitable Trusts.**—Cases under the Religious Endowments Act have been already dealt with above.

### Suits under 92 C. P. C.

**Madras decisions.**—In a scheme suit under s. 92 Civil Procedure Code, the plaintiff claimed among other reliefs that the defendants should be made to refund to the trust a sum of Rs. 11,000 which was estimated to be the amount misappropriated by them and also that they should hand over certain properties in their possession to the new trustees to be appointed under the scheme. A court-fee of Rs. 10 was paid on the plaint, but the court directed the plaintiffs to pay *ad valorem* duty on the valuation put on the several reliefs. On appeal, it was held that the reliefs for refunding money misappropriated and for possession of properties cannot be treated as part of the subject-matter in dispute between the parties but were merely ancillary reliefs nor did the plaintiffs claim any beneficial interest in the same. The suit was held to fall under Sch. II, Art. 17 (vi) of the Court-Fees Act and the court-fees paid was sufficient. *Ramrup Das v. Mohunt Sitaram Das*, 12 C. L. J. 221 was followed; and the observations in *Srinivasa v. Venkata*, 11 Mad. 148 were held to be *obiter dicta*. In the following extract from the judgment there is an elaborate review of the whole case law on the point.

“The figure Rs. 11,000 (being the value put in the plaint) was arrived at in this manner. The plaintiff actually paid a stamp duty only of Rs. 10 on the plaint as for a declaration and urged that the other reliefs which he claimed in the plaint were not capable of valuation because he was not asking that the property should be handed over to himself, and because he claimed no beneficial interest in those reliefs. The subordinate judge has held that the plaintiff was bound to pay court-fees on those reliefs as they formed part of the subject-matter in dispute. This view is not correct. *The plaintiff does not claim any beneficial interest in these sums*, but only says that on going through the accounts a sum which he estimates at Rs. 11,000 would be found due by the trustees to the trust and the trustees should be asked to make good to the trust itself that amount of money and hand over possession of the immoveable property. In such a case, we cannot treat those reliefs as being part of the subject-matter in dispute between the parties; they are merely ancillary reliefs. The case is covered by the

ruling in *Ramrup Das v. Mohunt Sitaram Das*, 12 C. L. J. 211. I respectfully follow the view taken in it by the learned Judges of the Calcutta High Court. No doubt, as pointed out by the Subordinate Judge, there is an observation in *Srinivasa v. Venkata*, 11 M. 148 that if damages on account of misappropriated moneys are claimed court-fees will have to be paid on such amounts. But these observations were unnecessary for the purpose of disposing of that case and were only *obiter dicta* and therefore I do not think that I am bound by those observations. It would be a hardship to worshippers who bring suits under s. 92 in order to see that the trusts are properly carried out and that the trustees do not misappropriate the moneys belonging to the trust or abuse the trust to have to pay court-fee upon such large sums of money. It will practically prevent them from bringing such suits. I am therefore inclined to think that this court should take a lenient view as regards court-fees with reference to claims of this sort. As it seems to me that the relief claimed clearly falls under Art. 17 (vi) of the second schedule to the old Court-Fees Act which was in force when the plaint was filed, there is no reason why the plaintiff should not be allowed to file the plaint on a ten-rupee stamp. The view taken by the Calcutta High Court in the case above quoted seems to me to be the proper view. My attention has been drawn to *Omrao Mirza v. Jones*, 10 C. 599, but that case was not one under s. 92 so far as can be gathered from the report. It is supposed to lay down a rule which is in conflict with the ruling in *Ramrup Das v. Mohunt Sitaram Das*, 12 C.L.J. 211, as appears from the arguments of the counsel before them, but no reference is made to it in the judgment. *Thakuri v. Brahma Narain*, 19 A. 60, has also been brought to my notice but it is easily distinguishable. In fact in that case the learned judges held at page 63 that court-fee need not be paid upon any claim for damages as part of the account asked for under s. 92 and they distinguish the cases in *Banoo Begum v. Ashgur Ally Khan*, 15 Beng. L. R. 167 and *Omrao Mirza v. Jones*, 10 C. 599 already referred to. They, no doubt, say that if a prayer for an injunction against interference was added and if that is valued, court-fee ought to be paid for it. Whether that portion of the decision is correct or not it is not necessary for me to say, for there is no such claim put forward in this case. There is a clear ruling by Venkatasubba Row, J. in *Ramanuja Naidu v. Alagappa Chettiar*, 47 M. L. J. 656, in which he held in a case exactly similar to the present that a single court-fee of Rs. 50 only need be paid. I should have been content merely to follow that case. The Legislature has now made it clear that extra court-fees are not payable even though claims are made for accounts to be taken and for moneys to be paid by the defaulting trustee to the trust fund if he had misappropriated them. I hold that the court-fee of Rs. 10 paid on the plaint is sufficient in this case." *Sudalimuthu Pillai alias Appavu Pillai and others v. Peria Sundaram Pillai*, 48 M. L. J. 514=1925 Mad. 722.

In a suit for declaration that the plaintiff was the Sajjadanashin of two durgas and their properties, the Sub-Judge transferred some of the defendants as plaintiffs, made the original plaintiff a defendant, and passed the decree appointing the 1st and 2nd plaintiffs according to the revised cause-title as Muthawalis of the two durgas and directing that they should take possession of the two durgas and their respective properties. The 6th defendant appealed against the decree praying that he should be appointed trustee of both the durgas in place of plaintiffs 1 and 2 and the question arose whether the appeal could be valued under Art. 17-B, Sch. II of the Court-Fee Act or whether it ought to be valued under s. 7, cl. (5) of that Act. It was held that the case fell under s. 7 cl. (5) and that Art. 17-B was inapplicable. *Syed Mahomed Gouse and others v. Government*, 48 M. L. J. 572 = 1925 Mad. 804 = 88 I. C. 209. See also the cases cited on the point under s. 7 cl. v, p. 168, *supra*.

**Original side of the High Court.**—The High Court can make rules for the imposition and collection of court-fees on the original side by virtue of the power to make regulations for its procedure conferred by s. 15 of the Charter Act. *Md. Ishack Saheb v. Mahomed Moideen*, 45 M. 849. And the Court-Fees Act not being applicable to suits filed on the original side of the High Court, and the rules framed in Madras not excepting suits under s. 92, C.P.C. from liability to pay *ad valorem* fee, a fixed fee is not leviable in such cases but only *ad valorem* fees, as scheduled under the rules—*Vide* High Court-Fees Rules, Madras, *Swaminatha Aiyer v. Guruswamy Mudaliar*, 1927 Mad. 940 = 105 I. C. 119.

**Allahabad**—As observed by their Lordships of the Allahabad High Court in *Thakuri v. Bhama Narain*, 19 A. 62, a suit under s. 92 of the C.P.C. is brought for the protection and preservation of endowed property. And it is safeguarded by the rule which requires that it must be instituted by the Advocate General himself or with his sanction. Instances may often arise in which the trust property is of considerable value. If court-fee has to be paid with reference to the full value whenever it was found necessary to bring a suit to remove a trustee who had committed a breach of trust, such court-fees might be prohibitive and prevent institution of the suit \* \* \*. Such a suit is not necessarily a suit for possession. In this case the plaintiffs also prayed that they themselves may be appointed as Superintendents but their Lordships observed that it did not matter and could not convert the suit as one for possession for the plaintiffs may never be appointed as such as prayed for by them. This decision was followed in *Gridhari Lal v. Ram Lal*, 21 A. 220.

In *Ghazaffar Hussain v. Yawar Hussain*, 28 A. 112, it was observed that "all that the plaintiffs can obtain in such a suit, is only a decree appointing a trustee declaring what properties are affected by the trust and directing the trustee to bring those properties into possession. If the trustee could not reduce the property into possession, then he must file a suit for possession".

**Lahore.**—Where the suit was for the removal of the existing Mohant and other trustees and for the making over of the properties to the newly constituted body of trustees, it was held that this Article applies. “The juridical person in possession of the property is the idol”. Consequently if one trustee is removed and another substituted for him the suit cannot be stated to involve the value of any portions of the idol’s property. *Beliram v Ishar Das*, 8 Lah. 730 = 1928 Lah. 113. See also *Gopi Das v. Lal Das*, 47 I. C. 983.

### Various types of suits under s. 92, C. P. C.

1. Suit for recovery of office of trustee and injunction, the actual possession being with tenants who are willing to attorn to rightful landlord falls under this Article. *Ramdoss v. Hanumantha Rao*, 36 M. 364 = 12 I. C. 449.

2. Suit for a declaration that the Jheer of a Mutt was not properly appointed and that the office is vacant and that a new Jheer may be appointed by the court; it was held that the possession of the property being with the defendant it should have been also prayed for. *Srinivasa Ayyengar v. Srinivasa Swami*, 16 M. 31. Where the plaintiff alleged that he was the duly elected Mahant in place of another and sued to recover possession of the properties attached to the Mutt it was held that the case was governed by s. 7 cl. (v) and not by this Article and court-fee was payable *ad valorem* upon the value of the properties of the Mutt but that the temple should be left out of account as having no market value. *Parsottamanand Giri v. Mayanand Giri*, 54 All. 869 = 1932 A. L. J. 777 = 1932 All. 593. In the judgment in this case, there is a review of the previous case-law on the point.

3. Where it is prayed that a *Mutawalli* may be declared as having become unfit to function as such, it has been held that though such declaration might result in his ejectment from certain immoveable properties belonging to the trust, still no *ad valorem* fee is payable. *Mir Yad Ali v. Mouli Mubrak Ali*, 2 I. C. 107. Where the subject-matter of the suit is the right to mutwalliship and the office does not carry any salary or any other material enjoyment, it is not capable of valuation in money and a fixed fee is payable under this Article. *Maulavi Sayeed v. Shah Tafazul Hussain*, 1934 Pat. 647. Where the office carried with it the right to the certain emoluments and to certain share in the proceeds of immoveable properties attached to the wakf, the suit would not be incapable of valuation. *Dalrus Banoo Begum v. Kazeer Abdur Rahman*, 23 W. R. 453.

4. Where the plaintiff brought a suit for three reliefs with regard to the post of archaka and trustee of certain temples, *viz.*, (1) for an account of the income of the period during which he was out of office, (2) for restoration to the offices in the said temples and (3) for an injunction, it was held that the second relief for restoration to the offices is not incapable of valuation and as it did not come under s. 7 cl. 4 (c) or any other specific provision of the Act it fell under Sch. I,

Art 1. As the plaintiff had stated distinctly that the income of the temple lands was divided among the plaintiff and defendants 1 to 3 and that defendants 4 and 5 had according to the terms of a compromise, to pay the plaintiff a sum of 8 annas every day, it was considered that there was some basis for valuation and the plaint was directed to be returned to the plaintiff for submitting a proper valuation for the relief regarding the restoration of the office. The decision in *Delrus Banoo Begum v. Kazee Abdur Rahiman*, 23 W. R. 453 at 455 was referred to and approved. *The Secretary of State for India in Council v. Jagan-nadhadosh Adhikari*, C. R. P. No. 316 of 1932 (Mad.) decided on 2-1-1933 (unreported).

5. A suit by a Hfunngyi to recover possession of a Khyauing which cannot be alienated and hence could have no market-value is taxable under this Article. *Komma v. Einda*, 57 I. C. 953.

6. Where the suit is substantially one under s. 92 Civil Procedure Code it does not become liable to pay *ad valorem* fees merely because the defendant is alleged not to have accounted for certain moneys and is directed to pay it into court. *Ramanuja Naidu v. Allagappa Chettiar*, 47 M. L. J. 646 = 1924 Mad. 882 = 85 I. C. 601 = 20 L. W. 716. See also 48 M. L. J. 514 cited *supra*.

7. Suit for removal of Mahant and appointment of a new Mahant and delivery of a trust property to him from the Mahant who is removed from office was held to come under this Article, *Gopi Das v. Lal Das*, 47 I. C. 983. See also *Beliram v. Ishar Das*, 8 Lah. 730 cited *supra*.

8. Where the plaintiffs claimed exclusive rights to manage certain Devasthanams and its affairs and prayed for removal of Dharmakharta or trustees, and for recovery of trust properties from the existing Dharmakarthis and the moneys that may be found due from them on taking accounts, it was held that these ancient institutions could not be held to have any market-value, that *ad valorem* fee is not leviable and that this Article applied. *Rajagopala Naidu v. Ramasubramania Ayyar*, 46 M. 782 F. B. = 1924 Mad. 10 = 74 I. C. 198. But when possession of property is sought from strangers to whom they were alienated by the trustee, the suit should be valued under s. 7 cl. v, since the alienees are in possession of the property adversely to the trust itself. *Venkatlal v. Kosaldasu Bavaji*, 61 M. L. J. 39 = 1931 Mad. 24. In this case, the suit was brought by the beneficiary under the trust, which provided for some wants of *Bhairagis* and in which the plaintiff possessed a beneficiary interest in the surplus income but the decision was not based upon this aspect of the case.

9. A suit for declaration that a certain wakfnama is valid as against a defendant who is in possession and claims the properties as his own private property is not maintainable without a consequential relief by way of joint possession, injunction or the like. Such a suit cannot therefore be brought upon a fixed court-fee payable under



Schedule II Article 17. *Shihan v. Abdul Alim Abed*, 34 C. W. N. 1129 = 1930 Cal. 787.

10. A suit for injunction restraining the defendants from interfering with the service of an idol by the plaintiff and for framing a scheme so that they and the defendants might be entitled to carry on the service of the idol and to enjoy the emoluments of the office separately and without interference from each other, is incapable of valuation falling under this Article. *Narain Mohan Dev v. Krishna Ballabhi Devi*, 1935 A. L. J. 295 = 1935 All. 292.

**Restitution of Conjugal Rights.**—A suit for a declaration that the defendant is the wife of the plaintiff and for restitution of conjugal rights falls under s. 7 (iv) (c). *Amirul Hussain v. Khairunissa*, 28 C. 567. Such a relief was held to be incapable of valuation. See *Golam Rahiman v. Fatima*, 13 C. 232; *Moula Nevez v. Sajedunessa*, 18 C. 378.

If it is incapable of valuation, then a fixed value is payable under Art. 17 (vi). But if the suit comes under s. 7 (iv) (c), then the plaintiff could value his relief as he chooses and *ad valorem* fee is payable thereon under Sch. I, Art. I. See *Jan Mahmud v. Masher*, 34 C. 352 and *Jair Hoosain v. Khurshed*, 23 A. 545. Where a declaration about the status of a husband or wife is sought and an additional relief in the shape of restitution of conjugal rights is prayed for, then it is obviously a suit for a declaration with consequential relief and falls within s. 7 (iv) (c) and the plaintiff could put his own valuation therefor. But the relief of restitution of conjugal rights is by itself incapable of valuation and where the suit is for such a relief alone, it will fall under this Article. *Aisha v. Fayaz*, 11 I. C. (All.) 186. See also the observations of Wallace, J., in 50 M. 646 set out *infra*. It may also be noticed that Art. 15 which provided for suits for the recovery of a wife has since been repealed.

A suit by a husband for restitution of conjugal rights with a prayer for an injunction restraining the wife's parents from obstructing recovery of the wife falls under s. 7 cl. (iv) (c) and not under this Article. In such a suit court-fee is payable *ad valorem* on the amount of valuation put by the plaintiff. *Gajendra Nath Saha Chowdhury v. Sulochana Choudhurani*, 39 C. W. N. 131.

**Partition suits.**—The enactment of a separate clause (cl. v A) in Sch. II, Art. 17 and of new cl. (vi A) in s. 7 by Bengal Act VII of 1935 has made the position as regards the partition suits very clear in Bengal. But it is only a legislative recognition of the case-law which is summarised below. See also under s. 7 cl. (iv) (b) *supra*, as there is some distinction made, at any rate in Madras, between partition suits between members of a Hindu joint family and those between other co-owners, which distinction is completely abolished in Bengal by the above amending Act.

(a) Suit for partition by a plaintiff who is in possession of property falls under this Article. *Mahendra Chandra v. Ashutosh*

*Ganguli*, 20 Cal. 762; *Rajani Kant v. Rajabala Dasi*, 52 Cal. 128 = 1925 Cal. 320 = 85 I. C. 898; *Iswari Pershad v. Rai Hari*, 6 Pat. 506 = 1927 Pat. 145 = 106 I.C. 621; *Nikka v. Fazal Dad Khan*, 1930 Lah. 839; *Mt. Hajian v. Mahomad Shafi Khan*, 34 P.L.R. 772 = 144 I. C. 614 = 1933 Lah. 780. It does not matter even if the defendants set up a defence that the suit property is not joint property and that the plaintiff has no title to it. *In the matter of Nand Lal Mukerjee*, 35 C. W. N. 942. Where in a suit for partition the plaintiff has stated in the plaint that the property was joint among the parties a fixed court-fee is sufficient under this Article. *Mt. Durga Devi v. Mt. Parbati*, 141 I. C. 175 = 1933 Lah. 208. A co-sharer is entitled to maintain a suit for partition without paying *ad valorem* court-fee, if his possession to some part of the joint property is admitted or established. But if it is established that he is not in possession of all or any portion of the joint property or that there had been a complete ouster he must sue for recovery of possession and partition and pay *ad valorem* court fees on a plaint appropriately framed for the purpose. *Tulsi Bibi v. Furokh Bibi*, 60 C. L. J. 377 = 1935 Cal. 273.

(b) Where there is no prayer in effect in ejectment but a mere prayer for the change in the mode of enjoyment is sought, the suit falls within this Article. *Bhagawanappa Wani v. Shiva Wani*, 101 I. C. 770 = 1927 Nag. 248.

(c) It is the allegation in the plaint that has to be looked to. If the allegation is that the plaintiff is in possession, the denial of that averment by the defendant does not take the suit out of the scope of this Article. *Mongammal v. Tolaram*, 16 I. C. 773 (Sind).

(d) Where the title to certain properties is in question, the plaintiff claiming it as joint family properties and the defendant as his property then *ad valorem* fee is leviable. *Kanhaiya Lal v. Baldev Lal*, 1925 Pat. 703 = 85 I. C. 538.

(e) Suit for partition of property between co-tenants the parties being in joint possession thereof falls under this Article. *Gill v. Varadaraghuvayya*, 43 M. 396 F. B. = 38 M. L. J. 92 = 55 I.C. 517; *Hassan Khan v. Ahmad Khan*, 1935 Pesh. 30. Mohamedans have no "joint family property," which is a peculiar concept of Hindu Law, and hence s. 7, cl. iv (b) does not apply in partition suits between Mohamedans. Mohamedan co-sharers are tenants-in-common, and a suit by one of them for partition and possession of his share of his father's properties, alleging that he is in joint possession of the properties with the rest falls under this Article. *Kurshit Kathunby v. Hyder Khan*, 1924 Mad. 207 = 1923 M. W. N. 564. A Hindu family which has become divided in status is no longer a joint family and the members of such a family are tenants-in-common of their property. A suit for partition between them therefore comes within this Article. *Suryanarayana v. Seshayya*, 1926 Mad. 122 = 90 I. C. 843. An allegation in the plaint that there has been a prior division in status and that the plaintiff is in possession of the properties as a co-tenant with the other

members of the family is enough to bring the suit under this Article. *Secretary of State v. Lakhanna*, 64 M. L. J. 24=141 I. C. 80=1933 Mad. 430; *Manikkam Pillai v. Murugesam Pillai*, 64 M. L. J. 576=1933 Mad. 431=143 I. C. 755.

(f) Where in a suit for partition the defendant appeals from the decree for partition he is not entitled to stamp the appeal memorandum under this Article simply on the ground that he is in possession of the property. But since in a suit for partition by a co-sharer claiming to be in joint possession, fixed court-fee under this Article, and not *ad valorem* fee is payable, the defendant-appellant in such a suit is also entitled to file his appeal on the same court-fee. *Abdul Rahiman v. A. B. Crisp*. 1930 Rang. 164=126 I. C. 645.

(g) Where in a suit for a partition of certain property by a plaintiff alleging that he is in joint possession of it with the defendants, the latter contended that he was out of possession and the court agreeing with them ordered payment of *ad valorem* court-fee for possession and on his failure to pay it dismissed the suit, and the plaintiff appealed challenging the finding of the court as regards his possession but not the order as to court-fee, the memorandum of appeal is chargeable with fee under this Article. *Jai Prataap Narain Singh v. Rabi Prataap Narain Singh*, 52 A. 756.

(h) Where in a suit for partition certain property alleged by the plaintiff to be wakf property and therefore impartible, on the defendant's contention was found by the court liable to partition and was included in the preliminary decree for partition, the plaintiff appealing from such a decree need pay court-fee only for declaration, and not for possession, as there is no decree for possession. *Rikhi Kesh v. Mela Ram*, 1931 Lah. 170.

(i) There is nothing in the law which requires a defendant in a partition suit to pay court-fees in order to have his share separated and one year's mesne profits allotted to him. He is merely to ask for it in his partition suit and it is open to the court to order the shares of the defendants in a partition suit to be separated as against themselves. The decree that is finally drawn up in the partition suit has to be stamped as an instrument of partition under the Stamp Act and except the stamp duty levied on the decree no other duty as court-fee is payable by the defendants. *Hem Chandra v. Prem Mahto*. 1926 Pat 154. See also *Venkatasubamma v. Ramanadhayya*, 55 Mad. 975=63 M. L. J. 845=1932 Mad. 722.

In *Kandunni Nair v. Ittunni Raman Nair*, 53 Mad. 540, where an appellant placed his own valuation on the appeal, valuing it at Rs. 350 and endeavoured to justify this course by showing that the suit falls either under s. 7 (iv) (b), as a suit to enforce the right to share in the property on the ground that it is joint family property, or alternatively under Sch. II, Art. 17 (6), which provides for a suit or appeal where it is not possible to estimate at a money value the

subject-matter in dispute, and which is not otherwise provided for by the Act, and the respondent on the other hand urged that the suit is one for possession as provided for by s. 7 (v), it was observed that the question must depend upon whether the plaintiff, at the time he brought the suit, was in or out of possession, actual or constructive, of the suit property. It was held as follows "If he was in constructive possession, the suit would resemble in nature one filed by a co-parcener in joint possession of the family property for partition, and it has been held by a Full Bench of this Court in 21 M. L. J. 21 that such a suit is governed by s. 7 clause (iv) (b) of the Act, on the theory that what the plaintiff really asks for is the conversion of his joint possession of the whole, whether actual or constructive, into separate possession of his share. Similarly, as has been held in 43 M. 396, a suit by a co-tenant for partition is governed by Sch. II, Art. 17 (vi), because it would not fall under s. 7 (iv) (b), the property not being joint family property. The appellant further relies upon 17 M. 232, which related to an invalid kanom of tarwad property granted by the karnavathi to two junior members. It was found that although there had been an attornment of the tarwad tenants to the kanomdars possession really remained with the karnavathi, and consequently it was enough for the plaintiff, who sued as a junior member of the tarwad to upset this arrangement, to ask for a declaration that the kanom was invalid. If however the kanom had been granted to a stranger who was in possession, the learned Judges add that the possession also must be sought as a relief consequent upon the declaration. This decision has been considered and explained in 57 M.L.J. 544, where the circumstances were closely similar. 'There are no doubt observations in that judgment', the learned Judges say, 'about unity of possession and about the possession of the tenant being the possession of the tarwad, etc. But they must be read with the facts of the case and do not support the contention that under no circumstances can a junior member of the tarwad sue for possession if the tarwad had parted with possession.' They further remark, 'The character in which an alienee anandravan holds possession will depend upon how far he ousts the tarwad and not upon whether he is member of it or not. If the tarwad is ousted then the possession of the person who ousts whether he be a member of it or not, is as injurious to the tarwad as ouster by a stranger and the member in possession must be sued, as if he was a stranger'. The same principles have been followed by Wallace, J., in the case of a Hindu coparcenary in 86 I. C. 627. It is accordingly necessary here to decide upon the plaint, the terms of which must determine the nature of the suit and the amount of court-fee to be paid, whether it was incumbent or not upon the plaintiff to sue for possession. The plaint was assessed to court-fee on the footing that the suit was one for possession and we consider that this is clearly right and that the appellant must pay a fee upon his memorandum accordingly."

In *Srinivasa Iyer v. Krishnaswamy Iyer*, 59 M. L. J. 913, the plaintiff stating that the family has been divided in status since 1921 sued for a partition by metes and bounds. The question was whether the suit should be valued notionally or *ad valorem*, the decision of which will also involve the further question of jurisdiction. The lower Court held that the suit can be valued notionally setting aside the order of the learned District Munsif that the valuation should be according to the market-value. Is it a suit to enforce the right to share in any property on the ground that it is joint family property? Jackson, J., answered as follows :—"This is by no means an easy question to decide, but I think it is answered authoritatively by *Rungiah Chetty v. Subramania Chetty*, 21 M. L. J. 21. Krishnaswami Ayyar, J., observes at page 26, 'There is a joint family at the date of the suit. The plaintiff's right to have the property divided is on the ground that the property belongs to the joint family on that date', and at the bottom of page 24 he says 'It must be admitted that a suit by a tenant in common in joint possession for the partition of the common property not belonging to a joint family cannot fall under this clause'. When a coparcenary has been disrupted, it cannot, I think, be described as joint family though the property of the family has not been divided by metes and bounds. Therefore in the light of this interpretation the plaint would not fall under s. 7 (iv) (b); and reading s. 4, along with s. 8 of the Suits Valuation Act it must be held that the valuation cannot be notional." See also 64 M. L. J. 24 and other cases cited under s. 7 cl. iv (b).

### The following cases have been held to come under this Article.

#### Suits.

1. *Malabar Tarwad*.—A suit for the removal of karnavan of a Malabar Tarwad. *Govindan v. Krishnan*, 4 M. 146; *Kuriham v. Sankara*, 14 M. 78. Special rules have since been made for the valuation of this particular kind of suit. See Appendix.

2. *Receiver*.—A prayer for the appointment of a Receiver if it stands alone is not capable of valuation. *Manmatha Nath v. Rohilli Mani Devi*, 27 All. 406, but if there is a consequential relief coupled with other reliefs for declaration, etc., then it falls under s. 7 (iv) (c) and *ad valorem* fee is payable. *Sankarpa v. Sakrava*, 36 I. C. 831.

3. *Registration of documents*.—In a suit to enforce registration under the provisions of the Registration Act, the fixed fee of Rs. 10 alone is leviable and not *ad valorem* fee upon the value of the property covered by the document. *Savarimuthu Pillai v. Alagium Pillai*, 25 M. 103; *Ramu Iyer v. Sankara Iyer*, 31 M. 89=17 M. L. J. 573 (F.B.); *Jantoo v. Radhanath Das*, 8 C. 515; *Dwijendra v. Jogesh*, 39 C. L. J. 40. But See *Pydal Nambiar v. Kannan Nambiar*, 12 M. L. J. 87.

4. *Interpleader suit*.—The fee leviable in such suit is under this Article. The delivery of the property is not a consequential relief but will naturally flow out of the decree declaring right to the same of one or the other of the defendants. The plaintiff in an interpleader suit simply sets the ball rolling leaving it to the several contesting parties to establish their title and the plaintiff takes a neutral attitude. Hence the fee payable is not *ad valorem* on the claim but only a fee of Rs. 10. See *Brijnarain v. Balmiki Prasad*, 61 I. C. 810.

5. *Madras Estates Land Act*.—A suit for commutation of rent under this Act comes within this Article. *S. P. Chinna v. Veerappa Naidu*, 46 M. L. J. 450. So also a suit to contest the landlord's right to sell, under s. 112 of the Act. But the plaint in such a suit being exempt from court-fee under the Government Notification, it is only the appeal or second appeal in such a suit which becomes chargeable to court-fee under this Article. *Vaithilinga Aiyasawami Aigar v. The District Board of Tanjore*, 52 M. 972 = 57 M. L. J. 570 = 30 L. W. 289 = 1930 Mad. 43.

## Appeals.

1. *Mortgage*.—(a) Appeal against decree absolute for redemption on the ground that mortgage money was deposited in court after period fixed for redemption. *Dadnov v. Somenath*, 10 I. C. 736. Under O. 34, r. 8, C. P. Code, as amended in 1929, money can be deposited, even after the expiry of time fixed by court.

(b) Appeal against the order of marshalling securities in a mortgage decree. *Ujgar v. Manatan Kuar*, (1883) A. W. N. 312. Where in an appeal from the final decree in a mortgage suit, the only question is whether the property should be sold or whether the mortgagee should foreclose, it is difficult to place an exact money value on the appeal and a fixed fee is payable on the appeal under this Article. *Durga Prasad v. Sri Niwas Surekha*, 151 I. C. 937 = 15 Pat. L. T. 696 = 1934 Pat. 473.

As to appeals in mortgage suits regarding priority and exoneration of property from liability, see pp. 572 and 573 supra.

(2) *Appeal from personal decree*.—An appeal by a defendant from a personal decree for money passed against him, on the ground that he is not personally liable but only as heir and legal representative of the deceased is governed by Sch. II, Art. 17 (vii) as amended by Bombay Amendment Act of 1932, [corresponding to Art. 17 (vi) of the main Act] and requires a court-fee of Rs. 15 only and need not be stamped *ad valorem*. *Jagannath v. Laxmi Bai*, 59 Bom. 439 = 36 Bom. L. R. 1220 = 1935 Bom. 111. [In this case, the decision turned on the fact that the value of the property was sufficient to satisfy the debt and there is an observation in the judgment that where the value of the property is low, the value of the subject-matter of the appeal would be the difference between that value and the amount of the debt.] An appellant appealing merely against the portion of a decree declaring his personal liability, can do so on a

court-fee of Rs. 10. *Bulaqi Das v. Lal Chand*, 36 P.L.R. 104=1934 Lah. 865. But see *Venkatarama Sastrigal v. Sabapathy Thevar*, 57 Mad. 632=66 M. L. J. 348=1934 Mad. 230, in which it has been held that the value of the subject-matter of an appeal against the portion of the mortgage decree declaring the personal liability of the mortgagor is the excess of the mortgage amount over the net sale proceeds for which alone he is by the decree likely to be made liable. [This decision is of no use where the property has not been actually sold at the time of appeal—see discussion under Sch. I, Art. 1.] In a suit by a puisne mortgagee for enforcement of his mortgage making the prior mortgagee a party defendant, the court passed a decree in Form No. 9 of Appendix D of Sch. I, Civil Procedure Code, and refused to provide for redemption of the prior mortgage in favour of the defendant and his prayer for personal relief. The prior mortgagee appealed praying for a personal decree in his favour and for a decree in Form No. 10. It was held that the court-fee payable on the appeal was under Sch. II, Art. 17 (vi) and not under Sch. I, Art. 1. *In re Akhil Bandhu Guha*, 61 Cal. 320=38 C. W. N. 248=58 C. L. J. 542=1934 Cal. 377.

3. An appeal against the rejection of a claim made under s. 10 of the Madras Forest Act, 1882. *Kumararaja v. Secretary of State*, 11 M. 308 F. B.

4. Where a decree for possession was granted limited to the life time of alienor and the appeal relates only to the removal of that limitation. *Rupchad v. Fateh Chand*, 8 A. L. J. 821.

5. Appeal against grant of letters of administration with copy of will annexed. *Eva Mount Stephen v. Hunter Garnet Greme*, 35 A. 448. See also the commentary under Sch. II, Art. 11 under the heading "*The Indian Succession Act*".

6. Where the appeal merely related to the mode of enforcement of a decree. *Radhakrishnan v. Mehtab Mian*, 90 I. C. 629.

7. Appeal against order directing property to be sold as incapable of partition. *Lachman Das v. Ragbir Ram*, 100 I. C. 17.

8. Where in a mortgage decree interest was allowed only up to date fixed for payment but there was an appeal against same to the effect that interest up to date of realisation of the money should be allowed, the fee was held to be leviable under this clause. *Bhavani Prasad v. Kutubunessa*, 27 A. 559. See also *Bhagwanti v. Atma Singh*, 154 I. C. 470 (Lah.) and other cases cited under Sch. I, Art. 1.

9. Where the prayer in an appeal was that certain findings in the lower court judgement should be expunged or that they should be declared to be *obiter dicta* and not binding on the parties, it was held that the relief was not capable of being estimated in money value and that a fixed fee was payable for it. *Zafar Ali Shah v. Amir Shah*, 144 I. C. 620=1933 Lah. 678.

**Appeal from an order under O. 21, r. 50 (2) Civil Procedure Code.**—Sub-rules (2) and (3) of r. 50 of O. 21, show that the subject matter in dispute in proceedings under them is the liability of the person against whom execution is sought for payment of the decretal amount on the ground that he was a partner in the judgment-debtor firm. The subject-matter in appeal against an order passed under sub-rule (2), therefore, is the liability of the judgment-debtor for the same amount. This amount is clearly ascertainable and it cannot be said that the subject-matter of the appeal is incapable of valuation coming under this clause. *Jugal Kishore Gulab Singh y. Dina Nath Siri Ram*, 35 P. L. R. 565 = 1934 Lah. 958 See also under Sch. I, Art. 1.

**Appeal from order rejecting plaint or memorandum of appeal for non payment of additional court-fee demanded.**—See under Sch. I, Art. 1.

**Appeal claiming future interest disallowed by lower court.**—See under Sch. I, Art. 1.

**Articles 17-B and 17-B (Madras).**—Art. 17-A and 17-B set out the fees payable where the subject-matter is such as are set out in those Articles when the plaint or memorandum of appeal is presented to, or against a decree of a District Munsiff's Court, the City Civil Court, a Sub-Court or District Court, in the case of Art. 17 A and of a Revenue Court in addition in the case of Art. 17-B. Under both Art. 17-A and 17-B where the provision is that the specified fee is leviable on a memorandum of appeal against a decree of a sub-court or of a district court it might happen to be a second appeal to the High Court, for it may be against such decrees passed in first appeal. As in such cases of second appeals the fee leviable under Art. 17-A and 17-B is Rs. 100, the following notification was issued by the Madras Government and a clause (c) was added to item 23 of the Notification No. 358 dated 10th Sep. 1921 "reducing to Rs. 15 the fees chargeable under Sch. II on a memorandum of a second appeal in a suit of the class mentioned in the Arts. 17-A and 17-B and instituted in the Court of a District Munsiff" (Boards' Proceedings No. 472 R. dated the 23rd December 1922) and later on *Vide* Boards' Proceedings No. 141, Mis., dated 26th April 1926, a clause (e) was added to the item 23 mentioned above which purported to reduce to Rs. 15 the fees chargeable under Sch. II on a memorandum of second appeal in a suit of the class mentioned in Art. 17-B and instituted in a Revenue Court". But it may be noted that Art. 17-B itself provides for a fee of Rs. 10 and the levy of Rs. 15 is an enhancement and no reduction.

## **Jurisdiction.**

**1. Suit to set aside summary orders.**—In suits where a fixed court-fee is leviable, the question arises as to how the suit should be valued for purposes of jurisdiction. In the first place from the nature of the relief sought such a suit could not come within the



cognizance of a Court of Small Causes, irrespective of the nature of the property.

There are several decisions on this point that are apparently irreconcilable. The difficulty is due to the fact that there are three parties involved in this matter, the attaching decree-holder, the judgment-debtor and the claimant. The fight may be between the decree-holder on the one hand and the claimant on the other and the judgment-debtor might side with the one or the other. Consequently when a regular suit is filed under O. 21, r. 63, the judgment-debtor may or may not be a party to the suit and if he is a party may or may not be a contesting party.

"The party against whom an order may be made, may be the decree-holder (O. 21, r. 60) or the claimant including an incumbrancer (O. 21, r. 61) or even the judgment-debtor. The result is where a claimant whose objection under s. 278 of the Code of Civil Procedure has been disallowed brings a suit and makes the judgment-creditor who was trying to execute the decree the sole defendant to the suit, a claim for a declaration that the property under attachment was the plaintiff's property and not liable to attachment in execution of the decree of the defendant is a claim for only one declaration, and for such purposes and in such a suit it is immaterial whether the claim is that the property is the plaintiff's and not liable to attachment or that the property is the plaintiff's as against the defendant's right to attach and that the order of attachment should be cancelled.

But where the person objecting under s. 278 of the Code brings his suit and makes not only the execution-creditor in the attachment proceedings but also the judgment-debtor in those proceedings parties to the suit, and asks for a declaration of the plaintiff's title to the property under attachment as against the judgment-debtor and also asks for a declaration in denial of the judgment-creditor's right to bring that property to sale in execution of the judgment-creditor's decree, there are two substantial declarations asked for. *Moti Singh v. Kausilla*, 16 A. 308.

The result therefore is as follows :—

(1) The decree-holder against whom an order is made under r. 60 may sue the successful claimant for a declaration of right to attach and sell the property released from attachment. *Mitchell v. Mathena Dass*, (1885) 12 I. A. 150. To such a suit the judgment-debtor is not a necessary party. *Ghazi Ram v. Mangal Chand*, 28 A. 41.

(2) The claimant whose claim has been disallowed under r. 61 may sue the decree-holder to establish his right to the property attached. *Narayana Rao v. Balakrishna*, 4 Bom. 529. To such a suit the judgment-debtor is a necessary party. *Ghazi Ram v. Mangal Chand*, 28 All. 41.

(3) A judgment-debtor who is not in fact a party to the claim proceedings does not in the eye of the law become such by reason solely of his being the judgment-debtor. Unless therefore he is in fact, a party the order is not binding on him necessitating any suit to set it aside. *Krishnaswami v. Somasundaram*, 30 M. 355; *Vadapalli v. Dronaraju*, 31 M. 163.

Consequently (1) in a suit for declaration that property is not liable for attachment and sale in execution of a decree where the value of the property is in excess of the amount claimed in execution of the decree, the value of the suit for the purposes of jurisdiction is not the value of the property but the decretal amount whichever is the lessor of the two. *Khetra v. Mutaz Begum*, 38 All. 72=31 I. C. 879; *Anandi Kunwar v. Ram Niranjana Das*, 40 A. 505=45 I. C. 494; *Phul Kumari v. Ghanshyam Misra*, 32 C. 202; *Moolchand Motilal v. Ram Kishen*, 55 All. 315=1933 A. L. J. 222=1933 All. 249 (F. B.); *Narain Das v. Thakur Prasad*, 1935 Oudh 271. (No previous objection filed and hence the suit not one under O. 21, r. 63, but that makes no difference.

But (2) where the plaintiff seeks not only for a declaration that the property is not attachable but for a declaration of title to the property against the decree-holder and the judgment-debtor the value of the suit for purposes of jurisdiction is the value of the property. *Saidar Begum v. Mehar Chand*, 18 I. C. 820; *Narayan Singh v. Aiyasami Reddi*, 39 M. 602; *Daw Dut v. Daw Kwi*, 1932 Rang. 20. According to a recent decision of the Madras High Court, such value has to be calculated under clause v of s. 7 of the Court-Fees Act, the suit being one concerning land within the meaning of s. 14 of the Madras Civil Courts Act. *Arumuga Mudaliar v. Venkatachala Pillai*, 56 Mad. 716=64 M. L. J. 568=1933 Mad. 439 (case-law on the point as to whether the value is the value of the property or the amount of the decree for which it was attached discussed.) See also *Maung Tun Thein v. Maung Sui*, 12 Rang. 670=1934 Rang. 372, where it was held that the valuation of a suit under O. 21, r. 63 C. P. C. is the value of the attached properties. In one case it was argued that the value of the relief should be arrived at by looking at Sch. II, Art. 17 (1), observing that a fee of Rs. 15 was payable, then looking at the table of *ad valorem* fees observing that that is the appropriate *ad valorem* fee for a claim of Rs. 190-200 and thus valuing that relief for the Court-Fees Act, the same value should be held to be the value for jurisdiction. This curious argument was not accepted by the court and the value of the relief was held to be the value of the subject-matter of the claim petition. *Janaki Amma v. Kuheema Umma*, 68 M. L. J. 231=41 L. W. 626=1935 Mad. 219.

**Declaratory Suit.**—The valuation cannot exceed the value of the subject-matter in dispute. Where a declaration is sought that a royalty could not be claimed at a higher rate, the value for the jurisdiction is the difference between the capitalized value of the two rates. *Karak v. Kaliyat*, 70 I. C. 343. Where the rate of maintenance

awarded in a previous decree is sought to be reduced, the value of the suit for purposes of jurisdiction is the benefit which the plaintiff seeks to obtain and the Court has to take into account the present value of the probable future payments that may have to be made. *Rajammal v. Thyagaraja Ayyar*, 69 M. L. J. 202 = 42 L.W. 42 = 1935 Mad. 655. The value for jurisdiction depends on the interest affected by the suit. The plaintiff cannot fix any arbitrary value. *Venkatachallier v. Srinivasa*, 75 I. C. 115. In a suit for declaration of title to land, the market value determines the jurisdiction subject to the maximum value provided in ss. 3 and 4 of the Suits Valuation Act. *Jagadish Saran v. Jaidaikunwar*, 1933 All. 903.

**Award.**—The value for the jurisdiction depends on the value of the interest affected by the suit. *Venkatachelliar v. Srinivasa*, 75 I. C. 115.

**Adoption.**—In certain provinces, *viz.*, Central Provinces, Oudh and the Punjab rules have been framed under s. 9 of the Suits Valuation Act regarding the valuation of such suits. See *Appendix*,

*Allahabad*. It is the value put by the plaintiff that determines the value for jurisdiction. *Sheodomi Ram v. Thulasi Ram*, 15 All. 378.

*Calcutta*. The same view is held as in Allahabad. *Prahlad v. Dwarka*, 14 C. W. N. 929.

*Bombay* also takes a similar view. *Bai Moch Bai v. Bai Hirabai*, 35 B. 265 = 100 I. C. 816.

*Madras*. The value for the jurisdiction is the value of the interest which the adopted son would lose or gain if the adoption is set aside or declared valid. *Keshava v. Lakshmi Narain*, 6 M. 192.

**Madras Amendment.**—In *In re Ramaswami Asari*, 52 Mad. 340 = 56 M. L. J. 107, it was held that a relief with regard to the validity or otherwise of an adoption is capable of valuation.

When a plaintiff comes into court urging that an alleged adoption did not take place and even if it did take place is not valid, he asks for a relief not merely with regard to the adoption but to the property which the adopted boy would acquire by means of the adoption. In other words, the value of the relief is the value of the property which the adopted boy would get if the adoption were true and valid. The value referred to in clause 17-A (iii) of the Court-Fees Act Madras (Amendment) means the market-value of the property.

Plaintiff's suit was for a declaration that no adoption had taken place and even if an adoption had taken place, it was an invalid adoption. The plaintiff appealed and paid a court-fee of Rs. 100 under Art. 17-A (iii) of the Court-Fees Act. The office objected to the amount and required the appellant to pay Rs. 500, that is Rs. 400 in addition, as the market-value of the property is more than Rs. 10,000. It was admitted that the market-value of the property in dispute is

not less than Rs. 10,000. The contention of the appellant, was that in a case falling under Art. 17-A (iii), the plaintiff is entitled to put his own valuation upon the relief claimed by him as it is not capable of valuation and even if it be held that the relief is capable of valuation, the relief should be valued not at the market value but upon the value of the relief which would accrue to the plaintiff. Their Lordships observed thus:—"The question whether a relief with regard to an adoption is capable of valuation or not need not be gone into at length. Whatever may be the view of the other High Courts, the Madras High Court has taken the view that a relief with regard to the validity or otherwise of an adoption is capable of valuation. In *Kesava v. Lakshminarayana*, 6 Mad. 192, it was observed 'that the plaintiff has asked for a declaration that the adoption was not made and that if it was made it was invalid. The fact and validity of the adoption is then the subject of the suit' and in valuing it for purposes of jurisdiction, a computation must be made of the value of the interest that would be lost to the alleged adopted minor, if the adoption be declared invalid.' It stands to reason that, when the plaintiff comes into court urging that an alleged adoption did not take place and even if it did take place is not valid, he asks for a relief not merely with regard to the adoption but to the property which the adopted boy would acquire by means of the adoption.

The Allahabad High Court in *Sheo Deni Ram v. Tulshi Ram*, 15 All. 378, departed from the view of this Court in *Keshava v. Lakshminarayana*, 6 M. 192, and in *Bai Machbai v. Bai Hirbai*, 35 Bom. 264, this question does not arise. That was a case between Muhammadans. In *Prahlad Chandra Das v. Dwaraka Nath Ghose*, 37 C. 860, the learned judge followed the practice which they had been following for a number of years. I do not think that on the strength of these cases the correctness of the decision in *Keshava v. Lakshminarayana*, can in any way be questioned. It is also urged that in the case of a karnavan of a Malabar Tarwad and in the case of a trustee, the relief cannot be valued and that principle should be applied to this case. In the case of karnavan, he does not own any property in his own individual right; he is only a manager of the Tarwad for the time being: and in the case of a trustee, it is well known that he has no personal interest in the matter though he may think much of his office as a trustee. Those cases cannot apply to a case like the present. The legislature in amending the Court-Fees Act by inserting in column 3 the following, namely, "Hundred rupees, if the value for purposes of jurisdiction is less than ten thousand rupees, and five hundred rupees if such value is ten thousand rupees, and upwards," has expressed its view that a relief with regard to an alleged adoption is capable of valuation. Under the old Act, the declaration was sought on a ten rupee stamp. When the legislature advisedly enacted the clause with regard to the proper fee, it assumed that a relief in regard to an adoption was capable of

valuation. This must be remembered in applying the case law to the present case. The next question is, what is the correct mode of valuation. It is contended that the correct mode of valuation would be the same as in the case of a suit for possession of property. In the case of property paying land revenue, the Court-Fees Act requires an *ad valorem* fee of ten times the Government assessment for suits for possession. But in the case of a house and other immoveable property, the market value is taken to be the value for purposes of court-fee. I do not see why, when declaration is asked for in respect of property the valuation should be on the basis of the valuation in a suit for possession. The mere fact that the Court-Fees Act makes a distinction in some cases between property paying land assessment to Government and other property not paying any assessment is no ground for importing that distinction into clause 17-A (iii) of the Court-Fees Act.

As it reads, it only means the market-value of the property. The clause is 'hundred rupees, if the value for purposes of jurisdiction is less than ten thousand rupees.' In cases where possession is asked for, the valuation for purposes of jurisdiction would be the same as the valuation for purposes of court-fee. But, in other cases, the valuation for purposes of jurisdiction need not necessarily be the same as the valuation for purposes of court-fee. Therefore, in a case like this, the valuation should be calculated on the market-value of the property which is likely to be affected by the declaration being granted or refused. In this view, it is unnecessary to consider the case in *Vasi Reddi Veeramma v. Butchayya*, 50 M. 646 = 52 M.L.J. 381. That is a case in which the question of jurisdiction was involved and no doubt there are some observations as to clause 17-A (iii) Sch. II of the Court-Fees Act. The cases in *Ganpathi v. Chathu*, 12 Mad. 223, and *Mohini Mohan Miser v. Gour Chandra Rai*, 5 Pat. L. J. 397, do not touch the point." The reference was answered in the affirmative, that is, that the market-value should be taken as the value of the relief claimed for cases coming under clause 17-A (iii) of the second schedule of the Court-Fees Act.

A full and lucid exposition of this subject of jurisdiction is found in the judgment by Wallace J. in *Vasi Reddi Veeramma v. Marupudi Butchayya*, 50 Mad. 646. It was there held that a suit for a mere declaration of the factum and validity of an adoption, without any consequential relief regarding lands or houses likely to be affected by the declaration has, for purposes of jurisdiction, to be valued, according to s. 12 of the Madras Civil Courts Act, on the basis of the market-value of the lands or houses likely to be affected by such declaration and not either according to plaintiff's pleasure or according to the valuation under the Court-Fees Act as if it were a suit for possession of such lands or houses. His Lordship observed as follows:—"The question at present for decision is, what is the proper value for the purposes of jurisdiction of this suit. The Subordinate Judge has held that it should be

valued as if it were a suit for possession of the above twelve items, in which case the valuation for jurisdiction would be the same as for court-fee purposes. For example, in the case of land he has taken not the market-value but 5 times the assessment and on that footing the valuation comes below Rs. 3,000. The appellant contends first, that in such a case the court is bound to accept the plaintiff's valuation for the purposes of jurisdiction and secondly, that if this view is wrong the proper valuation is the market-value of the 12 items. \* \* \*

The Suits Valuation Act VII of 1887 is naturally the statute to be followed if there is any section directly *ad hoc*, but there is not. No rules have been framed by the local Government under s. 3 of the Act, nor does the present suit come under the categories mentioned in sub-rule (1); it comes under Sch. II, Art. 17 of the Court-Fees Act. Section 8 of the Suits Valuation Act does not apply, because this is not a case in which the court-fee is payable *ad valorem*, and s. 9 does not apply. One is driven back to ss. 12 and 14 of the Madras Civil Courts Act III of 1872, I think it is clear that s. 14 does not apply. The scope of that section may be gauged by a reference to s. 6 of the Suits Valuation Act. This section is to be wholly repealed if and when rules under s. 3 are promulgated. Section 3 relates only to particular categories of suits of which the present suit is not one. Obviously therefore the framing of rules under s. 3 and therefore the repeal of s. 14 of the Civil Courts Act will not affect a suit like the present, and it follows that s. 14 is not intended to apply and does not apply to such a suit. Reference may be made to *Chalaswami Ramiah v. Chalaswami Ramaswami*, 13 I. C. 203. Hence the lower court is wrong in holding that s. 14 has any application. This is important as will appear later on, since it implies that the subject-matter of the present suit is not land, house or garden. Section 12 the general section, as amended by Act III of 1916, remains, whereby it is declared that the jurisdiction of a Subordinate Judge extends to all Civil suits and the jurisdiction of a District Munsif to such suits of which the amount or value of the subject-matter does not exceed Rs. 3,000. Two points then arise for decision—(1) What is the subject-matter of the present suit, and (2) What is the value of that subject-matter? As to (1) it has been noted above that the subject-matter of the suit is not the land or other properties which may be affected directly by the declaration. The subject matter is clearly the fact and validity of the adoption. *The plaintiff is not in any sense suing for possession of the property.* She is in possession of some and need not sue for that and she does not want possession of the remainder. The term "subject matter" is obviously not to be confined and applied only to what is capable of valuation in money. There are many suits which are incapable of such valuation, for example, suits for restitution of conjugal rights, suits for precedence in ceremonial worship and so on. The test simply is, what is the nature of the relief

sought, and in the present case that is the fact and validity of the alleged adoption.

The next point is how that is to be valued. The answer to this question cannot wholly be gathered from the statute law. The definition of "Value" in the Madras General Clauses Act I of 1891, s. 3 (32), takes us no further; but I am clear that the word "value" in s. 12 of the Civil Courts Act means market-value. The general principle as to valuation of suits and appeals is laid down in ss. 12 and 13 and the exception is in s. 14. Another exception is in s. 8 of the Suits Valuation Act. In these two cases valuation for jurisdiction and valuation for court-fee are to be the same; in others the general principle that valuation is to be based on the market-value must apply. This has been laid down in *Rachappa Subrao v. Shidapa Venkata Rao*, 43 Bom. 537, a Privy Council Case, and *Rattayya v. Brahmayya*, 41 M. L. J. 309. The former was a suit for declaration of adoption and the Privy Council held decidedly that the test was not the notional value imposed by the Court-Fees Act and Suits Valuation Act but the real value of the property. Here the conflict was between the valuation for the purposes of jurisdiction calculated on the court-fee paid and the real value of the property. The notional value of land as equivalent to so many times the assessment was in issue. The Privy Council held that the jurisdiction was determined by the real value of the land affected and not by its notional value. In *Rattayya v. Brahmayya*, 46 M. L. J. 309, it is clearly laid down that the word "value" in s. 12 of the Civil Courts Act means "market-value." In *Kesava v. Lakshminarayana*, 6 Mad. 192, where the suit was to set aside an adoption, the Court appears to have accepted the valuation given by the Commissioner who presumably estimated the market-value. On the other hand in *Chingacham Vitol Sankaran Nair v. Chingacham Vitol Gopala Menon*, 30 Mad. 18, a suit for mere declaration of title to land, the value of the land had been calculated at five times the assessment: but the court did not consider whether this method of calculation was correct, since in any case, whichever method was adopted the proper forum was the Subordinate Judge's Court; so it was not necessary to go into that point in that case.

It does seem an anomaly that a suit for a mere declaration of title to property should in certain cases have to be filed in a Court higher than the Court in which a suit for the property itself or a suit for a declaration of title with consequential relief should be filed. But that is the result of an anomaly in the law itself which lays down that in the latter cases a more artificial method of valuation at so many times the assessment is to be adopted. The anomaly is due to the statute law and not to the general principle. No case had been brought to our notice which lays down that in a suit for a declaration of title to property the method of calculating the value of the property is the court-fees method and not the real value. The respondent relies on *Ganapathi v. Cahthu*, 12 Mad. 223, in which it is

laid down generally that the valuation in a suit for a declaration of title by the party in possession shall be as if it was a suit for possession. But that can be interpreted in two ways, either as laying down that the value of the subject-matter is to be the value of the property or as laying down that the method of calculating the valuation of the subject-matter is to be the method of calculating that value in a suit for possession. The decision is not clear that the latter interpretation is meant. Section 4 of the Suits Valuation Act is also relied upon. No doubt if rules had been framed under s. 3 the method of calculation argued for by the respondent would come into force but that section seems to imply rather that if this method is to be employed it is necessary that the rule should have been framed under s. 3. The principle would be a good principle but, so far, it has not been embodied in any rule or statute.

“The general principles deducible for valuation for purposes of jurisdiction where no special method of valuation has been provided by statute, then, would seem to be, (1) that where the subject-matter of a suit is wholly unrelated to anything which can be readily stated in definite money terms, then the plaintiff, having to put some money value for the purposes of jurisdiction, must put a more or less arbitrary value, and, there being no factors in the case from which the court can say his valuation is wrong, or dishonest, the court will accept that valuation; such is the case of a suit for restitution of conjugal rights—see *Aklemannessa Bibi v. Mahomed Hatem*, 31 Cal. 849, and *Zair Husain Khan v. Khurshet Jan*, 28 All. 545, or a suit for a declaration that the plaintiff is a member of a charity committee—see *Murza v. Hyder Ali Sahib*, 24 I.C. 310 and (2) that where the subject-matter is so related to things which have a real money value that the relief asked for will affect these, then the value of the suit for the purposes of jurisdiction is to be taken as the market-value of the property affected, such for example, as a suit for a declaration of fishery rights—see *Mohini Mohan Misser v. Gour Chandra Rai*, 56 I. C. 762 or a suit to set aside an award, *Venkatachalam Pillai v. Srinivasa Ayyar*, 18 L. W. 309 or a suit regarding liability to pay royalty—see *Royrappan Nambiar v. Kalliyatt*, 1924 Mad. 621.

But the market-value must be the market-value of the whole property affected and not merely the plaintiff's share. This has been clearly laid down in *Keshava v. Lakshminarayana*, 6 Mad. 192 and *Ibrayan Kunhi v. Komamutti Koya*, 15 Mad. 501.

In applying these principles to the present suit which is a suit for a declaration without consequential relief, the appellant contends that the first principle applies, that is, that the court cannot refuse to accept the plaintiff's valuation unless it holds that that valuation is dishonest. There is a good deal to be said logically for this position, but clearly it has not been adopted in this Presidency as the law. The argument would involve the application of this criterion to all suits under Sch. II clause 17 of the Court-Fees Act,



whereas in any such suits as noted above, the courts have not adopted that principle. The present case cannot therefore come under the first category but must fall under the second, the valuation to be adopted for the purposes of jurisdiction being the actual market-value of the property."

The above decisions have been followed in a recent case *Nagamma v. Narasimham*, 68 M. L. J. 329=41 L. W. 469=1935 Mad. 279, in which it has been held that in a suit for declaration that an adoption is invalid, where the market-value of the properties comprised in the suit is more than Rs 10,000, a court-fee of Rs. 500 must be paid under Art. 17-A (iii). See also *Kattiya Pillai v. Ramaswamia Pillai*, 56 M. L. J. 394=29 L. W. 584=1929 Mad. 396; *Veeramma v. Venkatarasamma*, 68 M. L. J. 280=41 L. W. 452=1935 Mad. 313. In *Dhanabaggiammal v. Mari Ammal*, 36 L. W. 483=1932 Mad. 671, it was held that in a suit by the daughter of the last male holder against his widow, for declaration regarding certain alienations made by her, the market value of the properties covered by the alienations determines jurisdiction and not any notional value set by the plaintiff on her interest. In this connection reference may be made to *Arumuga Mudaliar v. Venkatachala Pillai*, 56 Mad. 716=64 M. L. J. 568=1933 Mad. 439, already cited under this Article under the heading "Suits to set aside summary orders". It is held there that in a suit to cancel the order on a claim petition, to declare the plaintiff's title to the property, to raise the attachment and to issue a permanent injunction against the execution being continued to sale, the proper value of the suit for purposes of jurisdiction is the value of the land as determined under s. 7 cl. v and not its market-value as the suit is one concerning land within the meaning of s. 14 of the Madras Civil Courts Act. The Bench decision in *Vasi Reddi Veeramma v. Marupudi Butchayya*, 50 Mad. 640, was referred to and dissented from and as that decision related to a different class of suit, viz., suit for declaration regarding the factum and validity of an adoption, the judge (Krishnan Pandalai, J.) did not feel bound by that decision in the present case and decided as aforesaid. This decision was given in a case coming under Art. 17 (1) of Sch. II; in which the court fee payable is the same whatever the value for purposes of jurisdiction, and cannot be taken as an authority for determining the value for court-fee in suits coming under Art. 17-A in view of the Bench decisions cited above. But as there are passages in the judgment which meet the reasoning adopted by Wallace, J., in the 50 Madras case cited above regarding the inapplicability of s. 14 of the Madras Civil Courts Act to suits falling under Art. 17 of Sch. II, thus avoiding the anomaly mentioned by Wallace, J., of a suit for a declaration of title to property, having to be filed in a court higher than the court in which the suit for recovery of the property itself should be filed, the relevant extracts from the judgment are given below :—

"It is said that that section (s. 14 of the Madras Civil Courts Act) is applicable only in classes of suits referred to in s. 3 of

the Suits Valuation Act, *viz.*, suits governed by s. 7, paragraphs 5, 6 and 10 of the Court-Fees Act, that is, possession of land, pre-emption and specific performance of an award. This method of interpreting this section is adopted by inference from the effect of s. 6 of that Act. It says that when rules are made for the territories under the administration of the Madras Government, s. 14 shall stand repealed as regards this presidency. A fallacy lurks in this inference because the effect of s. 4 of the Suits Valuation Act which is material in this connection is left out. That section says that when rules for valuing land have been made under s. 3 the same value shall be applicable as a maximum in suits relating to land or an interest in land falling within s. 7 cl. 4 or Schedule II, Art. 17. Now the suits relating to land in s. 7 cl. 4 are in sub-clause (b), (c), (d) or (e). Clause (b) deals with suits for partition, (c) with declaratory suits where consequential relief is prayed, (d) for injunction and (e) for a right to some benefit not otherwise provided for to arise out of land. In these suits and suits falling like the present one under Sch. II, Art. 17 relating to land, the valuation according to the rules made under s. 3 are to be adopted but as a maximum. This is to prevent over-valuation of suits. In suits for partition, declaration or injunction, in respect of land or for some benefit to arise out of land not otherwise provided for it would be necessary to value the land and it would be also necessary to value the interest involved and in such cases the section provides that the valuation of land under rules made under s. 3 shall be adopted as a maximum. The effect of this section on s. 6 is that if rules are made under section 3 the valuation thereby prescribed will be applicable also to the suits mentioned in s. 4 and then the need for s. 14 of the Civil Courts Act ceasing to exist that section shall stand repealed. Therefore it seems to me incorrect to say that s. 14 of the Civil Courts Act refers only to suits mentioned in s. 3 of the Suits Valuation Act."

**Cases where it is not possible to estimate the value.—**

Where on account of the fact that the subject-matter of the suit could not be valued, a fixed court-fee is levied, then the notional value could not replace the real value for the purpose of jurisdiction. *Rachappa v. Siddappa*, 24 C. W. N. 33 P. C. See also the several local amendments to this Article and the Rules framed by several Provinces. *Vide* Appendix.

A suit where the relief comes within Art. 17 (vi) for purpose of court fees may not necessarily be incapable of valuation for purpose of jurisdiction and cannot always be valued arbitrarily. In *Ramu Aiyer v. Sankara Aiyer*, 31 Mad. 89, where the suit was to enforce registration of document and therefore came within Art. 17 (vi) for purpose of court-fees, it was held that the jurisdiction value of the suit was the value of the properties to which the document related. Similarly in a partition suit where the relief comes within Art. 17 (vi) for purpose of court-fees, the jurisdiction value is the value of the property to be partitioned. See *Kirty Churn Mitter v. Annath Nath*

*Deb*, 8 Cal. 757, where it was held that for the purpose of jurisdiction the court should be guided by the value of the property in suit, but that the amount of the stamp-fee should be governed by a different principle and is that prescribed in Art. 17 (vi). See also *Rajani Kanta Bag v. Rajabala Dasi*, 52 Cal. 128. In Madras, a suit for partition of joint family property is held to come within s. 7, cl. iv (b) for purpose of court-fees and can therefore be valued arbitrarily for jurisdiction as for court-fees. In other cases of partition, the suit has to be valued at the value of the property. See note under the heading "Jurisdiction" under s. 7, cl. iv (b). The view of the Lucknow High Court also is that jurisdiction value is to be determined according to the plaintiff's share. See *Harbhan Dat v. Ladli Saran*, 1933 Oudh 547. The Lahore High Court also holds the same view. See *Harcharan Das v. Sukhraj Das*, 62 I.C. 979 (Lah.); 29 I.C. 766 = 108 P. L. R. 1915. The Patna High Court seems to make a distinction between partition suits where the plaintiff's title is in dispute and has to be adjudicated upon and those, where the plaintiff is in joint possession and there is no dispute as to title. See *Ranjit Sahi v. Maulvi Qasim*, 2 Pat. 432 distinguishing the decision in *Dukhi Singh v. Harihar Singh*, 1921 Pat. 89 (C. W. N.).

## Article 18.

Application under s. 523 of the Code of Civil Procedure.  [Now R. 17 of the Second Schedule of the Code of 1908].	.....	Ten rupees. In Bihar and Orissa and United Provinces—Fifteen Rupees.
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### COMMENTARY.

**Local amendments.**—This Article has been amended in Bihar and Orissa, Bombay, Central Provinces, Madras and the United Provinces. The amendments in Bihar and Orissa and in United Provinces are indicated above while those in other Provinces are given below separately.

**Bombay.**—By Act II of 1932, the following Article has been substituted, namely :—

18. Application.—  (a) under paragraph 17 of the Second Schedule to the Code of Civil Procedure, 1908,	..	Ten rupees.
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(b) for probate or letters of administration or for revocation thereof under the Indian Succession Act, 1925.	When the amount or value of the estate does not exceed two thousand rupees.	Two rupees.
	When it exceeds two thousand rupees but does not exceed five thousand rupees.	Five rupees.
(c) for a certificate under the Indian Succession Act, 1925, or Bombay Regulation VIII of 1827.	When it exceeds five thousand rupees.	Ten rupees.
(d) for opinion or advice or for discharge from a Trust, or for appointment of new Trustees. under ss. 34, 72, 73 or 74 of the Indian Trusts Act, 1883.	.....	Ten rupees.
(e) for the winding up of a company, under s. 166 of the Indian Companies Act, 1913.	.....	Ten rupees.
(f) under r. 58 of O. 21 of the Code of Civil Procedure 1908, regarding a claim to attached property.	When the amount or value of the property exceeds five thousand rupees.	Ten rupees.

**Central Provinces.**—By Act XVI of 1935, the following Article has been substituted, namely :—

18. Application—		
(a) under para. 17 or 20 of the Second Schedule to the Code of Civil Procedure, 1908 (V of 1908) ;		One rupee.
(b) for opinion or advice or for discharge from a trust, or for appointment of new trustees under section 34, 72, 73 or 74 of the Indian Trusts Act, 1882 (II of 1882) ;	...	Ten rupees.
(c) for winding up of a company, under section 166 of the Indian Companies Act, 1913 (VII of 1913).		Ten rupees.
(d) for the appointment or declaration of a person as guardian of the person or property or both, of minors under the Guardians and Wards Act, 1890 (VIII of 1890).		Two rupees.

**Madras.**—By Act V of 1922, the following Article has been substituted, namely :—

18. Applications under section 17 or section 20 of the second schedule of the Code of Civil Procedure, 1908.	When presented to a District Munsif's Court or the City Civil Court,	Fifteen rupees.
	When presented to a District Court or a Sub-Court.	One hundred rupees.

**Reference to the C. P. C.**—Section 523 of the Code of 1889 now corresponding to Rule 17 of the Second Schedule of the Code of 1908, relates to applications to file in court agreements to refer to arbitration.

**Application to file an award.**—In Madras and Central Provinces the Article has also been amended so as to bring within it an application under R. 20 of the Second Schedule of the Code of Civil Procedure, 1908 while in Bengal a separate Article (Art. 18-A) is enacted for the purpose. Rule 20 of Sch. II, C. P. C. relates to an application to file and pass a decree in terms of a private award made by arbitrators without the intervention of court. This application has to be distinguished from a regular suit for specific performance of an award, the court-fee payable in which is regulated by S. 7, cl. X (d). Rule 20 of Sch. II, C. P. C. provides a speedy and summary remedy and is no bar to a regular suit being brought on the award at the party's option. The decree passed in terms of the award on this application is not appealable, whereas a decree passed in the regular suit is appealable. Matters extraneous to the award cannot be included in the application, as the decree with regard to them is necessarily appealable. If therefore an award relates only to possession of immovable property, and the applicant seeks in addition to possession, mesne profits prior or subsequent to the award, the application has to be treated as a suit.

**Article 18-A—Bengal.** [Added by Act VII of 1935.]

Application under paragraph 20 of the second schedule to the Code of Civil Procedure, 1908 to file an arbitration award, and memorandum of appeal from a decree passed under paragraph 21 of the said schedule.	...	Fifteen rupees,
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## Article 19.

<p>Agreement in writing stating a question for the opinion of the court under the Code of Civil Procedure, 1908.</p>	<p>...</p>	<p>Ten rupees.</p> <p>In Bihar and Orissa, Central Provinces and United Provinces—Fifteen rupees.</p> <p>In Bombay—Twenty rupees.</p> <p>In Madras—when presented to a District Munsif's Court or the City Civil Court—Fifteen rupees.</p> <p>When presented to a District Court or a s u b-c o u r t—One Hundred rupees.</p>
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## COMMENTARY.

**Amendment.**—The wording of the Article was substituted by the Code of Civil Procedure s. 155 and the 4th Schedule.

**Local amendments.**—This Article has been amended in Bihar and Orissa, Bombay, Central Provinces, Madras and United Provinces.

**Stating a case for the opinion of the court.**—O. 36, r. 1, C. P. C. provides that parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing stating such question in the form of a case for the opinion of the court.

## Article 20

<p>Every petition under the Indian Divorce Act, except petitions under s. 44 of the same Act, and every memorandum of appeal [or of <i>cross objection</i> Bihar and Orissa] under s. 55 of the same Act.</p>	<p>...</p>	<p>Twenty rupees.</p> <p>Thirty rupees in Bihar and Orissa, Bombay and United Provinces.</p>
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## COMMENTARY.

**Local amendments.**—This Article has been amended in Bihar and Orissa, Bombay, and United Provinces.

**Application of Article.**—This Article applies only to petitions under the Indian Divorce Act and is not applicable to a petition under

**Article 22—Bengal—** [Added by Act VII of 1935].

Petition—(a) questioning the election of any person as a Municipal Commissioner, when presented to a District Judge under section 36 of the Bengal Municipal Act, 1932,

(b) questioning the election of any person as a member of a District Board or Local Board, when presented to any authority appointed under clause (a) of section 138 of the Bengal Local Self-Government Act of 1885 to decide disputes relating to such elections.

...

Fifteen rupees.

**Article 22—Punjab—** [Added by Act VII of 1922].

Plaint or memorandum of appeal in a suit by a reversioner under the Punjab customary law for a declaration in respect of an alienation of ancestral land.

.....

Twenty rupees.

The term "ancestral land" has been explained to mean land held by common ancestor. See *Musst. Jintan v. Ahmad*, 1928 Lah. 221. As to a suit by sons for a declaration regarding a mortgage with possession executed by the father in respect of ancestral land and a deed of further charge subsequently executed by him on the same property, see *Suba Singh v. Bala Singh*, 1933 Lah. 382, cited at p. 330 *supra*.

**Article 22—United Provinces** [Added by Act VII of 1933]

Election petition.

(a) A petition presented to the Commissioner of a division or to the Collector of a district (or to some other person or tribunal specially appointed by rule in this behalf) under subsection (2) of the section 22 of the United Provinces Municipalities Act (Act II of 1916), questioning the election of any person as a member of a Municipal Board.

One hundred rupees.

(b) A petition presented to a District Judge (or to some other person or tribunal specially appointed by rule in this behalf) or to a Munsiff under sub-section (2, of section 18 of the District Boards Act (Act X of 1922) questioning the election of any person as a member of a district board.	One hundred rupees.
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### Schedule III.

(See section 19-I.)

FORM OF VALUATION (TO BE USED WITH SUCH MODIFICATIONS,  
IF ANY, AS MAY BE NECESSARY).

IN THE COURT OF

*Re Probate of the Will of*  
*the property and credits of*

, (or administration of  
,) deceased.

I

{ solemnly affirm }  
make oath

and say that I am the executor (or one of the executors or one of the next of kin) of \_\_\_\_\_, deceased, and that I have truly set forth in Annexure A to this affidavit all the property and credits of which the abovenamed deceased died possessed or was entitled to at the time of his death, and which have come, or are likely to come, to my hands.

2. I further say that I have also truly set forth in Annexure B all the items I am by law allowed to deduct.

3. I further say that the said assets, exclusive only of such last-mentioned items, but inclusive of all rents, interest, dividend and increased values since the date of the death of the said deceased, are under the value of \_\_\_\_\_.



## ANNEXURE A.

## VALUATION OF THE MOVABLE AND IMMOVEABLE PROPERTY OF DECEASED.

Cash in the house and at the banks, household goods, wearing-apparel, books, plate, jewels, etc.

*(State estimated value according to best of Executor's or Administrator's belief.)*

Property in Government securities transferable at the Public Debt Office.

*(State description and value at the price of the day; also the interest separately, calculating it to the time of making the application.)*

Immoveable property consisting of

*(State description, giving, in the case of houses, the assessed value, if any, and the number of years' assessment the market-value is estimated at, and, in the case of land, the area, the market-value and all rents that have accrued.)*

Leasehold property

*(If the deceased held any leases for years determinable, state the number of years' purchase the profit rents are estimated to be worth and the value of such, inserting separately arrears due at the date of death and all rents received or due since that date to the time of making the application.)*

Property in public companies

*(State the particulars and the value calculated at the price of the day; also the interest separately, calculating it to the time of making the application.)*

Policy of insurance upon life, money out on mortgage and other securities, such as bonds, mortgages, bills, notes and other securities for money.

*(State the amount of the whole; also the interest separately, calculating it to the time of making the application.)*

Book debts

*(Other than bad.)*

Stock in trade

*(State the estimated value, if any)*

	Rs.	A.	P.
Other property not comprised under the foregoing heads. (State the estimated value, if any.)			
TOTAL			
Deduct amount shown in Annexure B not subject to duty.			
NET TOTAL			

## ANNEXURE B.

### SCHEDULE OF DEBTS, ETC.

	Rs.	A.	P.
Amount of debts due and owing from the deceased, payable by law out of the estate.			
Amount of funeral expenses			
Amount of mortgage encumbrances			
Property held in trust not beneficially or with general power to confer a beneficial interest.			
Other property not subject to duty			
TOTAL			

This Schedule was inserted by the Court-Fees Amendment Act, 1899 (II of 1899) s. 3, Genl. Acts, Vol. V. The original Schedule III was repealed by Act XIV of 1870. For Commentary, see under ss. 19-D and 19-I and Sch. I, Art. 11, *supra*.

# SUITS VALUATION ACT (VII of 1887)

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# THE SUITS VALUATION ACT

[ACT NO. VII OF 1887.]

[As amended by the Devolution Act XXXVIII of 1920.]

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PASSED BY THE GOVERNOR-GENERAL OF  
INDIA IN COUNCIL.

*Received the assent of the Governor-General on the  
11th February 1887.*

*An Act to prescribe the mode of valuing certain suits  
for the purpose of determining the jurisdiction of Courts  
with respect thereto.\**

WHEREAS it is expedient to prescribe the mode of  
valuing certain suits for the purpose of determining the  
jurisdiction of Courts with respect thereto ; it is hereby  
enacted as follows :—

Title 1. This Act may be called the  
Suits Valuation Act, 1887.

## COMMENTARY.

**Extent.**—The Act has been declared in force in Upper Burma  
by the Burma Laws Act, 1898 (XIII of 1898) ; in British Baluchistan  
by the British Baluchistan Laws Regulation, 1890 (I of 1890).

**Scope of the Act.**—Part I of the Act empowers the Local  
Government to make rules for determining the value of land for  
purposes of jurisdiction in certain classes of suits, and Part II declares  
that in suits not coming within paragraphs (v), (vi), (ix) and para-  
graph (x) cl. (d) of s. 7 of the Court-Fees Act, the value as determin-  
able for computation of court-fees and the value for purposes of  
jurisdiction shall be the same. *Ladli Begum v. Ramdoss*, 90 I. C.  
321 = 1926 Pat. 488.

**Valuation for jurisdiction**—The valuation for jurisdiction is  
not necessarily the same as that for court-fee except in the cases  
referred to in s. 8 of the Act. When a notional value, different from

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\* For Statement of Objects and Reasons, see Gazette of India, 1886, Pt. V,  
p. 791 ; for Report of the Select Committee see *Ibid*, 1887, Pt. IV, p. 18 ; and for  
Proceedings in Council, see *Ibid*, 1886 Supplement, pp. 1131 and 1155 and *Ibid*,  
1887, Pt. VI, pp. 16 and 21.

the real value is placed upon the property for the purposes of the court-fee, such notional value cannot displace the real value for the purposes of jurisdiction. *Rachappa v. Sidhappa*, 43 Bom 507 (P.C.). See also *Kalu Bin Bhiwaji v. Visram Mawaji*, 1 Bom. 543; *Akhil Chunder Sen v. Mohini Mohun Dass*, 5 Cal. 489; *Dayachand Nemchand v. Hemchand Dharamchand*, 4 Bom. 515 (F. B.); *Rupchand Khemchand v. Balvant Narain*, 11 Bom. 591. In Madras, the mode of valuing land suits is specially provided for in s. 14 of the Madras Civil Courts Act.

A plaintiff cannot be allowed to put an arbitrary value upon his claim where the valuation can be ascertained correctly, nor can he be allowed to overvalue or undervalue his claim with a view to choose his forum. *Inayat Husain v. Bashir Ahmad*, 1932 A. L. J. 416=1932 All. 413; See also *Jagadish Saran v. Jaidai Kunwar*, 1933 All. 903 cited under s. 4 *infra*; *Dhaturi Singh v. Kedar Nath*, 6 Pat. 597=1927 Pat. 224.

Where a defendant contests the valuation adopted by the plaintiff, the court has to determine the correct value. *Inayat Husain v. Bashir Ahmad*, 1932 A. L. J. 416=1932 All. 413; *Mohini Mohon Missir v. Gour Chandra Rai*, 1921 Pat. 32=1921 P. H. C. C. 105 (C. W. N.) following 31 Bom. 73.

As a general rule, the valuation depends on the allegations made in the plaint and the pleas raised by the defendant are not to be taken into consideration. See *Mt. Barkatunissa v. Mt. Kaniz Fatima*, 5 Pat. 631; See also 1926 Mad. 678; 1932 Mad. 409 and other cases cited under s. 7 of the Court-Fees Act, pp. 56-58.

What *prima facie* determines the jurisdiction of a court is the claim or the subject-matter of the claim, as estimated by the plaintiff and that having given the jurisdiction, the jurisdiction itself continues, whatever the event of the suit, notwithstanding *bona fide* mistakes made by the plaintiff in the estimate of the value. But the plaintiff cannot oust the jurisdiction of the court by making unwarrantable additions to the claim which cannot be sustained to the knowledge of the plaintiff. *Lakshman Bhatkar v. Babaji Bhatkar*, 8 Bom. 31. But see 9 I. C. 574=8 A. L. J. 376; *Girja Kur v. Shiva Prasad Singh*, 1935 Pat. 160.

**Forum of appeal.**—Jurisdiction for purposes of appeal follows the jurisdictional value of the suit. *Tuman Singh v. Bija*, 1927 Lah. 187.

Ordinarily the value fixed by the plaintiff in his plaint determines the forum of appeal, unless it is found that the plaintiff has deliberately undervalued or overvalued his claim with the object of having his suit tried or the appeal heard by a court which would not have jurisdiction if the claim is properly valued or has acted recklessly in fixing the value. *Pitam Singh v. Bishun Narain*, 1931 Oudh 58; *Muhammad Abdul Majid v. Ala Bux*, 47 All. 534=1925 All. 376. In *Sundar Das v. Mt. Umda Jan*, 5 Lah. 481=1925 Lah. 1 (F. B.) it

has been held that the value, for purposes of appeal, of a suit for possession of a house is the market value of the subject-matter of the suit as ascertained by the court and not the value as stated in the plaint.

The forum of appeal is not affected by any reduction of the plaintiff claim as a result of the adjudication of court or compromise. *Mathra Das Puri v. Jalal Din*, 140 I. C. 223 (Lah); see also *Lakshman v. Babaji*, 8 Bom. 31; *Madho Das v. Ramji*, 16 All. 286; *Seth Har Bux v. Lachman*, 1925 Nag. 183. But see contra *Mt. Umma Khair v. Aziz Ali*, 80 I. C. 183 = 1922 All. 47 which was a case under the Tenancy Act. In Madras, s. 13 of the Madras Civil Courts Act leaves no room for doubt and it is the amount or value of subject-matter of the suit that determines the forum of appeal.

There is a conflict of decisions as to the forum of appeal in suits for accounts, whether it is determined by the amount claimed in the plaint or the amount that is decreed by the court, as to which see under s. 11 of the Court-Fees Act, pp. 253-256.

Though a plaintiff who has previously valued his suit at a particular amount, is not precluded from adopting a higher valuation for his appeal as representing the actual or market-value of the claim, yet if he has chosen to value his claim in the plaint in a particular way, he cannot contend subsequently that his valuation given in the plaint was not the real value. *Haji Hafez Mahomed Hussain Khan v. Mansur Ali*, 38 C.W.N. 751 = 1934 Cal. 809. See also *Amir Nawab v. Mt. Wajeda Begum* 6 Pat. 420 = 1927 Pat. 289. In a suit for removal of a dam and for damages, the value for court-fees and jurisdiction is the same, viz., the value of the relief in respect of the removal of the dam as stated by the plaintiff and the amount of the damages and the future damages claimed by the plaintiff could not be added for the purpose of valuation either for court-fee or for jurisdiction, and the appeal filed in the High Court. *Girja Kur v. Shiva Prasad Singh*, 1935 Pat. 160.

Where the objection of the defendant that the plaintiff has undervalued his suit was rejected and the suit decreed on the merits, the defendant appealing can value his appeal at the same amount though there is a ground taken in the appeal that the suit had been undervalued in the plaint, and it could hardly lie in the mouth of the plaintiff respondent to say that he deliberately undervalued his claim in the plaint. *Gaya Dei v. Tulsha Dei*, 1935 O. W. N. 168 = 154 I. C. 125.

## PART I:

### SUITS RELATING TO LAND.

2. This Part shall extend to such local areas, and come into force therein on such dates, as the Governor-General in Council, by notification in the *Gazette of India*, directs.

Extent and commencement of Part I.

## COMMENTARY.

Part I of the Act been extended to the Punjab by Notification of the Government of India—*Vide Gazette of India*, 1889, Part I, p. 107.

3. (1) The Local Government *may subject to the control* of the Governor General in Council, make rules for determining the value of land for purposes of jurisdiction in the suits mentioned in the Court-Fees Act, 1870, section 7, paragraphs v and vi, and paragraph x, clause (d).

Power for Local Government to make rules determining value of land for jurisdictional purposes

(2) The rules may determine the value of any class of land or of any interest in land, in the whole or any part of a local area, and may prescribe different values for different places within the same local area.

4 Where a suit mentioned in the Court-fees Act, 1870, section 7, paragraph iv, or Schedule II, Article 17, relates to land or an interest in land of which the value has been determined by rules under the last foregoing section, the amount at which, for purposes of jurisdiction the relief sought in the suit is valued shall not exceed the value of the land or interest as determined by those rules.

Valuation of relief in certain suits relating to land not to exceed the value of the land.

## COMMENTARY.

**Amendment.**—The words “subject to the control” in s. 3 have been substituted for the words “with the previous sanction” by Act XXXVIII of 1920.

**Rules for valuing land.**—Under s. 3 the Local Governments are empowered to make rules for determining the value of land for purposes of jurisdiction in suits mentioned in the Court-Fees Act, s. 7 paras (v), (vi) and (x) (d). See *Narayan Nair v. Cheria Kathiri Kutty*, 41 M. 721. For rules made under this section in the Punjab, Central Provinces and in Oudh, see Appendix. In the Punjab, under the rules framed under the section, a pre-emption suit in respect of revenue-paying lands is to be valued at 30 times the jama 16 P. R. 1908; 46 P. R. 1908. Even when the subject-matter of the suit is a specific plot and not a definite share of the holding, proportionate assessment is to be taken as the basis. *Arshad Ali v. Zorawar Singh*, 1926 Lah. 346. Market-value is to be taken where the property is a house, see 101 P.R. 1900; 24 All. 218. Market value at the time of the sale and not market value at the time

of the suit is to be taken. *Sher Muhammad v. Ahmad*, 1924 Lah. 380. It has been held that the amount which determines the jurisdiction of the appellate court is the amount found by the trial court as the price payable by the pre-emptor. *Mt. Ilahi Jan v. Rahman Ullah*, 1928 Lah. 670. In Madras, s. 14 of the Madras Civil Courts Act, 1873, provides that the value is that fixed in s. 7 cl. v. See 41 Mad. 721. See also 9 I. C. 414; 10 All. 524; 13 All. 320 and 16 All. 286, as to valuation of pre-emption suits.

**Principle of the sections.**—Under these sections, the plaintiff cannot put a higher value on the suit than what is covered by his interest in the litigation. *Narayan Singh v. Aiyaswami Reddi*, 39 Mad. 602. S. 4 seems to indicate that the principle adopted by the legislature for valuing a suit mentioned in Sch. II, Art. 17 of Court-Fees Act which relates to land or an interest in land is that the valuation of such suit for purposes of jurisdiction shall be governed by the value of the land or interest in land. *Dayaram Jagjivandas v. Gobordhandoss*, 31 Bom. 73. See also under Sch. II, Art. 17, Court-Fees Act, pp. 595-602. In the absence of rules under s. 3 the value should not be left to the option of the plaintiff but must be determined by judicial decision where disputed. See 31 Bom 73 *supra*.

**Scope of sections.**—In a suit for determination of title to land, the market-value determines the jurisdiction, subject to the maximum value which should be calculated under the rules having regard to Ss. 3 and 4, and the plaintiff cannot value his relief as he likes. *Jagdish Saran v. Jaidaikunwar*, 1933 All. 903; see also *Mohini Mohan Missir v. Gour Chandra Rai*, 1921 P. H. C. C. 105 (C. W. N.); *Akleanessa Bibi v. Mahomed Hatem*, 31 Cal. 849. Where the subject-matter of the suit is land, s. 14 of the Madras Civil Courts Act provides that the value shall be determined in the manner provided in s. 7 cl. v of the Court-Fees Act, which section is to stand repealed as soon as rules are framed under s. 3 of this Act. It has been held that that section is not applicable to cases mentioned in s. 4 of the Suits Valuation Act. See *Vasi Reddi Veeramma v. Marupudi Butchayya*, 50 Mad. 646. See also *In re Ramaswami Asari*, 52 Mad. 340=56 M. L. J. 107. But see contra *Arumuga Mudaliar v. Venkatachala Pillai*, 56 M. 716=64 M. L. J. 568=37 L. W. 552=1933 Mad. 439. For further commentaries, see pp. 598-602 *supra*. A suit for a declaratory decree, in respect of a property must be filed in the court where a suit for possession of that property would lie. *Kamta Siroman Prasad Singh v. Gaya Din Pathak*, 25 O. C. 184=69 I. C. 201=1922 Oudh 249. The decision of the Madras High Court to the same effect in *Ganapathi v. Chathu*, 12 Mad. 223 has been considered and explained by Wallace, J. in *Vasi Reddi Veeramma v. Marupudi Butchayya*, 50 Mad. 646. See at pp. 599-600, *supra*. See also *Balakrishna Nair v. Vishnu Nambudri*, 1930 M. W. N. 509. As to suit for declaration and consequential relief see *Barru v. Lachman*, 111 P. R. 1913=22 I. C. 503 (F. B.) As to the power of courts to interfere with the plaintiff's valuation in



suit for a declaratory decree and consequential relief, see under s. 7 cl. iv of the Court-Fees Act, pp. 66-69. See also under s. 8, *infra*

**Certain special cases.**—A suit by a reversioner for a *declaration* that certain alienations made by the widow of the last male holder are not binding on the reversionary right and an *injunction* restraining the alienees from committing waste, need not be valued for jurisdiction according to the market-value of the properties. *Kanakaraju v. Venkataraju*, 68 M. L. J. 243 = 41 L. W. 627 = 1935 Mad. 262.

As to jurisdictional value of a suit for *declaratory decree without consequential relief*, coming under Art. 17 of Sch. II, Court-Fees Act see under that Article at pp. 594-602.

In a suit for *declaration* by the daughter of the last male holder by a pre-deceased wife, against his widow for certain declarations in respect of alienations made by her, the market-value of the properties covered by the alienations determines jurisdiction and not any notional value given by the plaintiff of her interest in the properties. *Dhanabagiammal v. Mari Ammal*, 36 L. W. 483 = 1932 Mad. 671.

In a *suit by an unsuccessful claimant* for a declaration that the property attached is his own and could not be attached, the valuation for jurisdiction is the value of the property or the amount of the decree, whichever is less. *Moolchand Motilal v. Ram Kishen*, 55 All. 315 = 1933 A. L. J. 222 = 1933 All. 249 (F. B.). So also in a converse *suit by attaching creditor* see *Subramaniam v. Narasimham*, 56 M.L.J. 489 = 1929 Mad. 323. Where however in a suit by an unsuccessful claimant, the judgment-debtor is added as a party and there is a prayer that the plaintiff's title should be declared as against him, it is the value of the property which governs jurisdiction where it exceeds the amount of the decree. *Daw Dut v. Daw Kur*, 1932 Rang. 20. Where no objection was taken in execution proceedings, a suit for declaration that a property is not liable to attachment and sale in execution of a decree, cannot be treated as one under O. 21, r. 63, C. P. C., but it is in no way different from such a suit, where it is clear from the allegations made in the plaint and the relief sought therein that the sole object of the suit is to get a declaration that the property is not liable to attachment and sale in execution of the defendant's decree, and the judgment-debtor is made merely a *pro forma* defendant and no relief is claimed against him. The value in such a suit is not the value of the property but the amount of the decree. *Narain Das v. Thakur Prasad*, 1935 O. W. N. 305 = 1935 Oudh 271. For further commentaries on the point, see under Sch. II, Art. 17, Court-Fees Act, pp. 592-594.

As to jurisdictional value of a *suit for declaration regarding an adoption* see under Sch. II, Art. 17, Court-Fees Act, pp. 595-602.

As to value of a *suit to set aside an award*, see *Rachappa v. Sidhappa*, 43 B. 507; *Venkatachalam Pillai v. Srinivasa Ayyar*, 18 L. W. 399 = 1924 Mad. 84.

As to jurisdiction value in *partition suits*, see under s. 7 cl. iv (b) and Art. 17 of Sch. II of Court-Fees Act at p. 83 and at pp. 602-603. The view of the Lucknow High Court is also that the jurisdiction value is to be determined according to the plaintiff's share. See *Harbhan Dat v. Ladli Saran*, 10 O.W.N. 1196=1933 Oudh 547. So also in the Punjab. *Harcharan Das v. Sukhray Das*, 62 I. C. 979 (Lah.); 29 I. C. 766=108 P.L.R. 1915. The earlier ruling of the Patna High Court in *Dukhi Singh v. Harihar Singh*, 1921 P. H. C. C. 89, (C. W. N.) was not followed by that court in a later case, *Ranjit Sahi v. Maulo Qasim*, 2 Pat. 432, where it was held that where the plaintiff is in possession and there is no dispute as to title the value of the suit is the value of the entire property and not merely that of the plaintiff's share, distinguishing the previous decision as having been given in a case where the plaintiff's title to a share in the property was in dispute. The Calcutta High Court has however in a later case held that no such distinction can be made in a partition suit which is triable by the court which is competent to try a suit valued at the entire value of the property and not the subject-matter of the share which is claimed by the plaintiff. *Rajani Kanta Bag v. Raja Bala Dasi*, 52 Cal. 128=29 C. W. N. 76=1925 Cal. 320. But this is opposed to the general trend of judicial decisions and to the new cl. vi A of s. 7 enacted by the Bengal Act VII of 1935, according to which *ad valorem* court fee is payable on the value of the plaintiff's share in a suit for partition where the plaintiff has been excluded from possession of the joint property, when s. 8 of the Suits Valuation Act comes into operation so as to make that value the value for purposes of jurisdiction also. In the case above *cited*, however, the plaintiff originally brought his suit on a fixed fee on the allegation that he was in joint possession, but later on objection raised by the defendant paid *ad valorem* court-fee. According to Rangoon High Court also, it is the plaintiff's share that determines the valuation. *Ma Fatima v. Momin Bibi*, 7 Rang. 164=1929 Rang. 211.

In the absence of rules for fixing valuation the plaintiff's valuation should be accepted for determining jurisdiction in *cases where satisfactory value is not possible*. 15 All. 378; 28 All. 545; 35 B. 264; 37 C. 800. In the case of *suits for registration of documents*, see *Ramu Aiyer v. Sankara Aiyer*, 31 M. 89, cited under Sch. II, Art. 17 Court-Fees Act at p. 602. See also *Golan Rahman v. Sabekjan Bibi*, 53 Cal. 1023=1926 Cal. 1091, in which it was held that the plaintiff is entitled to put his own valuation on his suit for registration of a conveyance. The Patna High Court has held that in the absence of rules under ss. 3 and 4 of the Act, the valuation of a suit is the money value of the loss which the plaintiff apprehends would result to him. *Ram Sehkar Prasad Singh v. Sheonandan Dubey*, 2 Pat. 198=1923 Pat. 137.

As to valuation of a suit under ss. 14 and 18 of the Religious Endowments Act, 1863, see 11 M. 148; 8 M. 516; 20 M. L. T. 726.

As to general principles of valuation in all such cases see the observations of Wallace, J., in 50 Mad. 646 cited at p. 600 *supra*.

5. (1) The Local Government shall, before making rules under section 3, consult the High Court with respect thereto.

Making and enforcement of rules.

(2) A rule under that section shall not take effect till the expiration of one month after the rule has been published in the local official gazette.

6. On and from the date on which rules under section 3 take effect in any part of the territories under the administration of the Governor of Fort St George in Council, to which the Madras Civil Courts Act, 1873, extends, section 14 of that Act shall be repealed as regards that part of those territories.

Repeal of section 14 of the Madras Civil Courts Act, 1873.

## PART II.

### OTHER SUITS.

7. This Part extends to the whole of British India, and shall come into force on the first day of July, 1887.

Extent and commencement of Part II

8. Where in suits other than those referred to in the Court-Fees Act, 1870, section 7, paragraphs v, vi and ix, and paragraph x, clause (d), court-fees are payable *ad valorem* under the Court-Fees Act, 1870, the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same.

Court fee value and jurisdictional value to be the same in certain suits.

### COMMENTARY.

**Application of section.**—The meaning of s. 8 is that the value for purposes of jurisdiction shall follow the value for purposes of court-fee and not *vice versa*. *Gurdwara Mahant Jawal Singh v. Kala Singh*, 1931 Lah. 307; *Maung Nyi Maung v. Mandalay Municipal Committee*, 12 Rang. 335 = 1934 Rang. 268; see also 56 Bom. 23; *In the matter of Kalipada Mnkharjee*, 34 C. W. N. 870 = 1930 Cal. 686; *Bura Mal v. Tulsi Ram*, 1927 Lah. 890; *Sailendra Nath*

v. *Ramchandra*, 25 C. W. N. 768=66 I. C. 268=1921 Cal. 84. For further commentaries on the point, see under s. 7 cl. (d), Court-Fees Act, pp. 119-120. But where the plaintiff valued the suit for declaration and injunction at Rs. 2,100, in order to give jurisdiction to a court of a higher grade, the value for court-fee also should be the same viz., Rs. 2,100 *Gurdwara Mahant Jawal Singh v. Kala Singh*, 1931 Lah. 307. See also *Mammi Lal v. Gopalji*, 47 All. 501 and other cases cited at pp. 119-120 *supra*.

In all such cases, the amount at which the plaintiff values the relief sought by him for purposes of court-fee is to be taken despite anything to the contrary in the plaint as the value for purposes of jurisdiction. *Ghulam Haidar v. Bishambar Das*, 140 I. C. 73=33 P. L. R. 458.

Jurisdiction will not however be affected by an erroneous payment of court-fee. *Gopala Menon v. Raman Menon*, 35 L. W. 64=1932 Mad. 217, citing *Jallaldeen v. Vijayalakshmi*, 39 M. 447.

**Sonthal Parganas.**—Though it is doubtful whether the Act applies to the Sonthal Parganas, the principles underlying it apply and the jurisdiction should follow the valuation on which court-fees are paid. *Narayan Jha Narone v. Jogni Prasad Jha*, 13 Pat. 329=1934 Pat. 184 (S. B.)

**Suit for money.**—In a suit for recovery of certain mortgage amount with interest, the value both for jurisdiction and court-fees is the amount claimed in the plaint. *Sailendra Kumar v. Hari Charan*, 58 Cal. 829=1931 Cal. 159. See also 2 All. 698; 18 Bom 696; 47 All. 534. As to a suit to establish a charge over certain property, see 4 M. 339. As to jurisdiction to adjudicate on the question of set off, where its value exceeds the pecuniary jurisdiction of the court, see *Abraham & Co. v. Ebrahim Gorabhai*, 2 Rang. 462=1925 Rang. 65.

**Maintenance and annuities.**—The valuation of suits for maintenance or annuities is the same both for court-fees and jurisdiction. In a suit where annuity is sought to be declared as a charge upon property, the value of the annuity and not that of the property to be charged determines the valuation of the suit. *Mira Abid Hussain v. Ahmad Hussain*, 28 C. W. N. 289 (P. C.) A suit for reduction of rate of maintenance awarded in a previous decree does not fall within S. 7 cl. (ii) but is a suit for declaratory relief and the value for jurisdiction is the benefit which the plaintiff seeks to obtain and the Court has to take into account the present value of the probable future payments that may have to be made. *Rajammal v. Thyagaraja Ayyar*, 69 M. L. J. 202=1935 Mad. 655.

**Declaration and injunction.**—In a suit for declaration that a decree is not biding on the plaintiff and for injunction the value for court-fees and jurisdiction is the same. *Jhanda Singh v. Gulab Mal Bhagwan Das*, 137 I. C. 240=33 P. L. R. 488. As to the power of the Court to revise the value given by the plaintiff in such suits see

under s. 7 cl. (iv) Court Fees Act, pp. 66-69. See also the cases cited under S. 1, *supra*.

In a suit for declaratory decree where consequential relief is prayed, the plaintiff is entitled to put his own valuation subject to ss. 4 and 9 of this Act but he must put one single and entire sum as representing the value of all the reliefs and cannot put one valuation for purposes of court-fee and another for purposes of jurisdiction. *Basanta Kumari Debya v. Nalini Nath Bhattacharjee*, 57 C.L.J. 465; see also 36 All. 500; 47 All. 501; 46 All. 419.

S. 8 of the Suits Valuation Act takes effect as against s. 14 of the Madras Civil Courts Act and where such a suit in respect of land worth Rs. 8,000 was valued at Rs. 4,000, and was disposed of by the sub-court, the *forum* of appeal is determined by the latter value, and an appeal lies only to the District Court and not to the High Court. *Official Reciever of Ramnad v. Arunachalam Chettiar*, 65 M. L. J. 420 = 38 L. W. 447 = 1933 Mad. 721.

**Cancellation of documents.**—In a suit for cancellation of documents, although the value put by the plaintiff on his suit *prima facie* determines the jurisdiction, the plaintiff cannot place an arbitrary value. *Maung Noe v. Maung Kha Pu*, 1933 Rang. 40. But there is a conflict of decisions as to the power of the court to revise the plaintiff's valuation in such classes of suits, for which see under s. 7 cl. (iv) Court Fees Act at pp. 66-69, *supra*.

**Cancellation of decrees.**—See under s. 7 cl. (iv) (c) Court Fees Act, pp. 107-109 and 113-117.

**Suit for injunction.**—See pp. 119-120.

**Suit for accounts.**—In a suit for accounts, the jurisdiction value and the court-fee value are the same. *Iswarappa v. Dhanji*, 56 Bom. 23 = 1932 Bom. 111; see also *Mohan Lal v. Nihal Chand*, 1935 Lah. 40; *Ma Thin On v. Ma Ngwe Hmon*, 12 Rang. 512 (Administration suit); *Muhammad Abdul Majid v. Ala Bux*, 47 All. 534. See also at p. 125, *supra*. As to value of a suit for dissolution of partnership, see *Arura Mal Uttam Chand v. Makhnan Mal Amir Chand*, 1930 Lah. 725. As to the power of the plaintiff to fix the value, see under s. 7 cl. (iv) (f) of the Court Fees Act, pp. 125-126. As to valuation of appeals in suits for accounts, see pp. 127-144.

As to the power of a court to pass a decree in a suit for accounts, for a sum in excess of its pecuniary jurisdiction, see under s. 11 of the Court Fees Act, pp. 241-253 *supra*. As to the view of the Patna High Court on the point, see the recent decision in *Mt. Urehan Kuer v. Mt. Kabutri*, 13 Pat. 344 = 1934 Pat. 204 (S. B.), holding that in a suit for partnership accounts, the jurisdiction of the court is not ousted by the court ultimately finding that a decree for a sum exceeding the limits of its pecuniary jurisdiction should be given to the plaintiff.

As to the forum of appeal in account suits, whether it is determined by the plaint valuation or the amount actually found due, there is again a difference of the opinion. See pp. 253-256 *supra*.

**Redemption and foreclosure.**—Regarding the jurisdiction value of a suit for redemption and foreclosure, there is a conflict of decisions, as to which see under s. 7 cl. (ix), Court Fees Act, pp. 183-185 *supra*. See also *Jaswant Ram v. Moti Ram*, 7 Lah. 570 = 1926 Lah. 376 (F. B.) according to which the jurisdictional value in a redemption suit is the amount found by the court to be the value of the mortgagee's charge on the property and not the amount alleged by the plaintiff to be due on the mortgage. The jurisdiction value of a suit for redemption of a mortgage and for recovery of surplus profits is the principal amount of the mortgage. *Pothanna v. Satyanandachari*, 60 M. L. J. 698 = 33 L. W. 785 = 1931 Mad. 479; *Mahatha Long Singh v. Bishun Lal Singh*, 1933 Pat. 625. For further commentaries see under s. 7, cl. (ix) of the Court-Fees Act, pp. 175-182. The jurisdiction value of a suit for redemption of kanom and for recovery of a certain amount as damages, is the kanom amount alone. *Gopal Menon v. Raman Menon*, 35 L. W. 64 = 1932 Mad. 217.

**Suit for specific performance**—See under s. 7 cl. (x), Court-Fees Act, p. 204.

**Landlord and tenant.**—In a suit under s. 44 or s. 84 of the Agra Tenancy Act, the value both for purposes of court-fees and jurisdiction is the amount of the rent for the year next preceding the year when the suit is brought. *Raghunath Ram v. Sitaj Lal*, 1934 A. L. J. 708 = 1934 All. 825.

As to suit for ejectment against a tenant, see 39 M. 873 and other cases cited under s. 7 cl. (xi), Court-Fees Act, p. 211.

9. When the subject-matter of suits of any class, other than suits mentioned in the Court-Fees Act, 1870, section 7, paragraphs v and vi, and paragraph x, clause (d), is such, that, in the opinion of the High Court, it does not admit of being satisfactorily valued, the High Court may, with the previous sanction of the Local Government, direct that suits of that class shall, for the purpose of the Court-fees Act, 1870, and of this Act and any other enactment for the time being in force, be treated as if their subject-matter were of such value as the High Court thinks fit to specify in this behalf.

#### COMMENTARY.

Rules have been framed under this section in Madras, the Punjab, Central Provinces and Oudh, for which see Appendix. The rules so

framed have the force of law. It is not for courts to consider whether in the case of particular classes of suits, the High Court and the Local Government have exercised their discretion wisely. *Ganpat Rao v. Laxmibai*, 43 I. C. 64 = 15 N. L. R. 24.

The fee fixed in Art. 17 of Sch. II is only provisional and if and when rules are framed for computing the value for court-fees in any or all the cases mentioned therein, the fee will have to be levied accordingly. *Ganpat Rao v. Lakshmi Bai*, 43 I. C. 64 (Nag.); see also *Amdu v. Pessi*, 1930 Nag, 20; *Nok Sing v. Bholusing*, 1930 Nag. 73.

In the Punjab a suit to get a wall demolished and for injunction falls under R. 4 of the Lahore High Court Rules. *Munshi Ram v. Ram Saran*, 1934 Lah. 796. But that rule is not applicable to a suit for injunction restraining the Municipal Committee from demolishing a *thara* not constructed in accordance with the sanction. *Dongarsi Das v. The Municipal Committee, Fazilka*, 11 Lah. 38 = 1929 Lah. 556.

In Central Provinces, a suit for declaration regarding an adoption is to be valued at the market-value of the property, title to which would be affected by it, if it exceeds Rs. 400 in value. *Harihar Rao v. Salu Bai*, 1927 Nag. 256; see also *Amdu v. Pessi*, 1930 Nag. 20; *Nok Singh v. Bholusingh*, 1930 Nag. 73.

Where no rules have been framed, the Court-Fees Act would apply and the fees prescribed in the Schedules to that Act have to be paid. *Varadaraja v. Arunugham*, 22 L. W. 15 = 1925 Mad. 1216.

The Calcutta High Court has held that in cases falling under s. 7 cl. (iv) Court Fees Act, the Court has power to correct the plaintiff's valuation, but so long as there are no rules made under s. 9 of the Suits Valuation Act, the Court would have no standard before it on which it may regard the plaintiff's valuation as an under-valuation and its powers of correction would have to be exercised on that footing. *Narayangunj Central Co-operative Sale and Supply Society v. Mafizuddin Ahmed* 61 Cal. 796 = 1934 Cal. 448 (F. B.) See also *Chinnamal v. Madarsa Rowther*, 27 Mad. 480.

As regards value in suits for restitution of conjugal rights, rules have been framed only in the Punjab. Ancillary reliefs may be ignored. *Nathur v. Musst Chuhri*, 52 I. C. 101 = 20 P. L. R. 1919. In other provinces, the plaintiff's valuation is accepted unless it is not *bona fide* in the opinion of the court. See *Jashoda Chhotu v. Chhotu Mannu*, 11 Bom. L. R. 1352; *Jan Mahomed Mandel v. Meshar Bibi*, 34 Cal. 352; *Zair Hussain Khan v. Khurshed Jan*, 28 All. 545.

## PART III.

## SUPPLEMENTAL PROVISIONS.

## 11. (1) Notwithstanding anything in section 578

Procedure where  
objection is taken on  
appeal or revision that  
a suit or appeal was  
not properly valued  
for jurisdictional pur-  
poses.

of the Code of Civil Procedure, an objection, that, by reason of the over-valuation or under-valuation of a suit or appeal, a Court of first instance or the lower appellate Court, which had not jurisdiction with respect to the suit or appeal, exercised jurisdiction with respect thereto, shall not be entertained by an appellate Court unless—

(a) the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded, or, in the lower appellate Court, in the memorandum of appeal to that Court, or

(b) the appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was over-valued or under-valued, and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

(2) If the objection was taken in the manner mentioned in clause (a) of sub-section (1), but the Appellate Court is not satisfied as to both the matters mentioned in clause (b) of that sub-section, and has before it the materials necessary for the determination of the other grounds of appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the Court of the first instance or lower appellate Court.

(3) If the objection was taken in that manner, and the appellate Court is satisfied as to both those matters, and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the Court with respect to the hearing of appeals; but, if it remands the suit or appeal, or frames and refers issues for trial or requires additional evidence to be taken, it shall



direct its order to a Court competent to entertain the suit or appeal.

(4) The provisions of this section with respect to an Appellate Court shall, so far as they can be made applicable, apply to a Court exercising revisional jurisdiction under section 622 of the Code of Civil Procedure or other enactment for the time being in force.

(5) This section extends to the whole of British India, and shall come into force on the first day of July 1887.

#### COMMENTARY.

**Code of Civil Procedure.**—The reference to ss. 578 and 622 of the old Code must be read as references to the corresponding provisions of the present Code, *viz.*, ss. 9) and 115.

**Scope of the section.**—The section covers all cases of erroneous valuation. *Aklemannessa v. Mahomed Hatem*, 31 Cal. 849 (Arbitrary valuation given in a case which is incapable of valuation). The section applies also to erroneous valuation caused by a wrong application of the sections of the Court-Fees Act. *Ammalu Ammal v. Krishnan Nair*, 52 I. C. 715 = 30 M. L. J. 38; see also *Krishnasami v. Kanakasabai*, 14 Mad 183; *Nana v. Mulchand*, 21 I. C. 918 (Nag.); *Balkrishna v. Jankibai*, 44 Bom. 331. S. 11 includes all cases of erroneous valuation and does not make any distinction between cases in which the valuation depends upon rules having the force of law and those in which the valuation is determined otherwise. *Mt. Jagatram Kuer v. Mt. Munder Kuer*, 13 Pat. 290 = 1934 Pat. 240; see also *Sadar Khan v. Musst Aisha Bibi*, 6 Lah. 105 = 1925 Lah. 290 (F. B.) overruling 132 P. R. 1894 and 35 P. R. 1901.

**Object of the section.**—The object of the section is to provide a machinery for curing the original want of jurisdiction in certain circumstances. *Per* Coutts Trotter, J. in *Kelu Achan v. Parvathi Nelhiyar*, 46 Mad. 631 = 18 L. W. 1 = 45 M. L. J. 135 = 1924 Mad. 6 (F. B.).

**Application of section.**—This section is not applicable to validate arbitration proceedings in a suit pending before a court having no pecuniary jurisdiction where objection had been taken by the defendant in time but was not decided by the court. *Amir Chand v. Buti Shah*, 1930 Lah. 195. The application of the section is not confined to cases of final disposal. Even where the lower appellate court has remanded a case to the first court for a finding, without pecuniary jurisdiction to hear the appeal, the defect is cured by the section. *Raman v. Secretary of State for India in Council*, 24 Mad. 427.

**Sub-s. (1) Cl. (a)—Objection when to be taken.**—The under-valuation or over-valuation is treated as a mere irregularity contemplated by s. 578 (now s. 99) Civil Procedure Code and objection must be taken at the earliest opportunity. *Raghavachariar v. Raghavachariar*, 20 M. L. J. 26. Where no objection to pecuniary jurisdiction is raised in the written statement or at the time of settlement of issues, the court is justified in refusing to entertain such a plea subsequently. *Narayan Jha Narone v. Jogni Prasad Jha*, 13 Pat. 329 = 1934 Pat. 184 (S. B.).

The principle of the section has to be extended to collateral proceedings other than appeals and objection on the ground of pecuniary jurisdiction cannot be taken in such collateral proceedings, *Narasimham v. Subramaniam*, 56 M. L. J. 489 = 1929 Mad. 323.

Objection as to under valuation or over-valuation of a suit cannot be raised for the first time in the course of execution proceedings. *Gian Chand v. Charanji Lal*, 36 P. L. R. 238 = 1934 Lah. 804; see also *Mt. Jagatram Kuer v. Mt. Munder Kuer*, 13 Pat. 290 = 1934 Pat. 240.

Where in a pauper suit, no valuation was given due to oversight, and the suit was subsequently found to be beyond the pecuniary jurisdiction of the court, it was held to be a case of under-valuation, and where no objection was taken in the trial court, it could not be raised in execution. *Mt. Jagatram Kuer v. Mt. Munder Kuer*, 13 Pat. 290 = 1934 Pat. 240; see also *Maung Nyi Naung v. Mandalay Municipal Committee*, 12 Rang. 335 = 1934 Rang. 268.

There is nothing to prevent the appellate court from entertaining an objection to pecuniary jurisdiction if such objection was taken in the lower court at or before the first hearing. *Kamta Siroman Prasad Singh v. Gayadin*, 69 I. C. 201 = 25 O. C. 184

**Sub-s. (1) c'. (b) and sub-s. (2)—Absence of prejudice.**—Objection as to pecuniary jurisdiction cannot be entertained for the first time by the appellate court unless it is satisfied that there has been some miscarriage of justice on the merits. *Mt. Urehan Kuer v. Mt. Kabutri*, 13 Pat. 344 = 1934 Pat. 204 (S. B.); see also *Kesho Prasad Singh v. Lakhu Rai*, 1923 Pat. 581 = 4 Pat. L. T. 525; *Ammalu Ammal v. Krishnan Nair*, 62 I. C. 715 = 30 M. L. J. 38; *Kishen Lal v. Rup Chand*, 9 A. W. N. 169; *Kolu v. Sodha Singh*, 1927 Lah. 860, (objection not entertained in second appeal); *Naran Chandra Ghose v. Rangalal Ghose*, 37 C. W. N. 764 (objection not entertained in revision). Objection as to jurisdiction, should not be given effect to unless the court finds that the wrong valuation has prejudicially affected the disposal on the merits. *Hamidunissa Bibi v. Gopal-chandra Malakar*, 24 Cal. 661. It is not enough that the objection to jurisdiction was taken at an early stage in the trial court. The appellate court should be further satisfied that the over-valuation or under-valuation has prejudicially affected the disposal of the case on the merits, if the objection is to be upheld. *V. S. Aiyar v. Maung*

*Nyun*, 1929 Rang. 228. See also *Shankar v. Trilok Nath*, 11 Lah. 15=1929 Lah. 509; *A Chelmayya v. A. Lakshmi Devamma*, 1925 Mad. 171; *Dinesh Chandra v. Sarnamoyi*, 1 C. W. N. 136. The appellate court is not justified in directing the plaint to be returned for presentation to proper court on the ground of over-valuation unless it is also satisfied for reasons to be recorded in writing that the over-valuation has prejudicially affected the disposal of the suit on the merits. *Raghunandan Prasad v. Ajodhya Singh*, 1930 All. 869; See also *Wahidulla v. Kanhaya Lal*, 25 All. 174. The validity of the decree is not affected by the mere fact that a suit has been over-valued or under-valued, unless the disposal of the suit on the merits has been prejudicially affected by that. *Mool Chand Motilal v. Ram Kishen*, 55 All. 315=1933 A. L. J. 222=1933 All. 249 (F.B.) See also *Naran Chandra Ghose v. Rangalal Ghose*, 37 C.W.N. 764; *Budha Mal v. Ralia Ram*, 9 Lah. 418=1928 Lah. 825. A suit for maintenance valued at Rs. 3,000 having been disposed of on the merits, and an appeal having been filed against the decree, the appellate court should not entertain an objection to jurisdiction on the ground that the value was Rs. 18,000 as it was cured by waiver. *Hamir Kaur v. Court of Wards*, 33 P. L. R. 634=1932 Lah. 538.

The question whether the want of pecuniary jurisdiction has prejudicially affected the disposal of the case on the merits or not must be decided in the circumstances of each case. *Sheoraj Singh v. Phulbasa Kuer*, 28 O. C. 203=1925 Oudh 561. The reference in the section to the disposal of the suit being prejudicially affected on the merits has nothing to do with the different rules of procedure relating to the filing of appeals. The argument that an under-valuation resulting in the trial of the suit before the District Munsiff, must be prejudicial to the unsuccessful party, because an appeal from him lies to a District Court and then to the High Court by Second Appeal where questions of fact are not open to discussion, whereas, if the suit has been brought originally before the Sub Court it would come by first appeal to the High Court, where questions of fact are open to discussion is untenable. *Kelu Achan v. Parvathi Nelhiyar* 46 Mad. 631=45 M. L. J. 135=18 L. W. 1=1924 Mad. 6 (F. B.); *Musa Imran v. Bhagawan Das*, 1927 All. 359; see *Narasimham v. Subramaniam*, 1927 Mad. 201 holding that the mere fact that a party was deprived of a right of appeal on facts before the High Court cannot be deemed to have prejudicially affected the disposal of the appeal on the merits. See also *Mt. Ilahi Jan v. Rahmanullah*, 1928 Lah. 670. But see *Banni v. Mangu*, 114 I. C. 440 (Lah.) and also the cases cited below.

Where if the appeal were properly valued, it would have come directly to the High Court, where it would be decided by a Bench of two judges as a first appeal, the under-valuation resulting in its disposal by the District Judge must be deemed to have prejudicially affected the disposal of the appeal on the merits. *Rukmin Das v. Deva Singh*,

5 Pat. 505 = 1926 Pat. 351 and *Sheoraj Singh v. Mt. Phulbasa Kuer*, 28 O. C. 203 = 1925 Oudh 561 in both of which the decision in 46 M. 631 *supra* was dissented from. See also *Cheloo v. Kalidas*, 21 P. R. 1918.

**Reasons to be recorded.**—See *Raghunandan Prasad v. Ajodhya Singh*, 1930 All. 869. It is only where the appellate court decides that the suit was over-valued or under-valued and that such over valuation or under-valuation has prejudicially affected the disposal of the suit, that reasons for such decision must be recorded and not where it ignores the objection. *Musa Imran v. Bhagwan Das*, 1927 All. 359.

**Procedure.**—In *Rajwant Singh v. Mutalli*, 1930 Lah. 182, it is held that "where the disposal of the case by the lower court was prejudicially affected by over-valuation or under-valuation the procedure for the Appellate Court prescribed in the section is that the court shall hear the appeal, if there is sufficient material on the record to enable it dispose of the appeal, that if the court finds it necessary to have further evidence recorded or to remand the case, then the further evidence shall be recorded by and remand shall be made to the court which was competent to hear the suit and that the law nowhere authorises the appellate court to return the plaint for presentation to the proper court. But see *Raghunandan Prasad v. Ajodhya Prasad*, 1930 All. 869; *Dalip Singh v. Kundan Singh*, 36 All. 58; *Wahidullah v. Kanhaya Lal*, 25 All. 174. (F. B.)

Sub-sections 2 and 3 deal with cases where the valuation for jurisdiction given in the trial court or the first appellate Court is found incorrect. In such cases one or the other of the parties might have been prejudiced by such incorrect valuation. If there is no such prejudice and the appellate court is in possession of sufficient materials to decide the case on the merits, the procedure to be followed is laid down in sub-section (2). If on the other hand, the incorrect valuation has resulted in prejudice to a party, and the appellate court is not in possession of sufficient materials for deciding the case, the procedure is laid down in sub-section (3). These two sub sections do not exhaust all possible cases, for instance, where the incorrect valuation has resulted in prejudicing a party and the appellate court has got sufficient materials before it. Obviously such a case must be taken to be an exception to the rule that an incorrect valuation for jurisdiction does not necessarily vitiate the trial and the decree. In such a

case, the proper course seems to be for the appellate court to set aside the decree of the trial court or the lower appellate court as the case may be, and direct it to return the plaint or the memorandum of appeal to be presented to the proper court.

Where the pecuniary value of the suit is beyond the jurisdiction of the lower court, but the appellate court decides to ignore the objection as to jurisdiction and proceed with the appeal, it can still order payment of deficit court-fee payable in the lower court on the correct valuation under s. 12 of the Court fees Act. See *Moideen Kani v. Nagoor Meera*, C. R. P. Nos. 866 and 1684 of 1932 (Mad.) decided on 19-1-34 (unreported) cited at pp. 286-287, *supra*.

**12.** Nothing in Part I or Part II shall be construed to affect the jurisdiction of any court—

Proceedings pending  
at commencement of  
Part I or Part II.

(a) with respect to any suit instituted before rules under Part I applicable to the valuation of the suit take effect, or Part II has come into force, as the case may be, or

(b) with respect to any appeal arising out of any such suit.

# APPENDIX I.

## PROVINCIAL AMENDING ACTS.

### ASSAM ACT III OF 1932.

*[Received the assent of the Governor on the 29th March, 1932  
and of the Governor-General on the 17th April, 1932.]*

#### THE ASSAM COURT-FEES (AMENDMENT) ACT- III, 1932.

*An Act to amend the Court Fees Act, 1870.*

Whereas it is necessary to amend the Court Fees Act, 1870, in its application to Assam in the manner hereinafter appearing: —

Short title, extent and commencement. 1. (1) This Act may be called the Assam Court Fees (Amendment) Act, 1932.

(2) It extends to the whole of Assam.

(3) It shall come into force on the 1st May, 1932.

Amendment of section 7. 2. In section 7 of the Court Fees Act, 1870 (hereinafter referred to as the principal Act),

in sub-clause (a) of clause v for the word 'ten' the word 'twenty' shall be substituted.

Amendment of section 10. 3. For clause ii of section 10 of the principal Act, the following clause shall be substituted, namely:—

ii. In such case—

(a) The suit shall be stayed until the additional fee is paid and if the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed; and whether the additional fee is or is not paid.

(b) The Court may, if it is of opinion that the estimation has been grossly insufficient, further order that the expenses of the commission, or such portion thereof as the Court may think reasonable, be paid by party in fault to the Government, and the order so made shall have the force and effect of a decree passed by the Court

## BENGAL ACT IV OF 1922.

[As amended by Amendment No. II Act, 1922].

## THE BENGAL COURT-FEES (AMENDMENT) ACT, 1922.

[PUBLISHED IN THE CALCUTTA GAZETTE, EXTRAORDINARY OF THE  
29TH MARCH, 1922.]

*An Act to amend the Court-fees Act, 1870, and the Presidency Small Cause Courts Act, 1882, with reference to the scale of court-fees in Bengal.*

Whereas it is necessary to revise the scale of court-fees for Bengal, by amendment of the Court-Fees Act 1870, and the Presidency Small Cause Courts Act, 1882, in their application to Bengal, in the manner hereinafter appearing ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Court-Fees (Amendment) Act, 1922.

(2) It extends to the whole of Bengal.

(3) It shall come into force on the first day of April, 1922.

2. The Court-fees Act, 1870, as amended by subsequent legislation, and the Presidency Small Cause Courts Act, 1882, as amended by subsequent legislation, shall be amended, in their application to Bengal, in the manner hereinafter provided.

3. In section 18 of the Court-Fees Act, 1870, for the words “a fee of eight annas” the words “a fee of one rupee” shall be substituted.

4. In item viii in section 19 of the same Act for the words “one thousand rupees” the words “two thousand rupees” shall be substituted.

5. For Article 1 in the first schedule to same Act the following shall be substituted, namely :—

“ 1. Plaint, written statement, pleading a set-off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) or of cross objection presented to any Civil or Revenue Court except those mentioned in section 3.	{ When the amount or value of the subject-matter in dispute does not exceed seventy-five rupees, for every five rupees or part thereof of such amount or value ;	Six annas.
	and { when such amount or value exceeds seventy-five rupees, for every five rupees or part thereof, in excess of seventy-five rupees, up to one hundred rupees ;	Eight annas.

1. *Plaint, etc.—cont 1.*

and	
when such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees, up to one hundred and fifty rupees ;	One rupee ten annas.
* *	
when such amount or value exceeds one hundred and fifty rupees, for every ten rupees or part thereof, up to one thousand rupees ;	One rupee two annas.
and	
when such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to seven thousand five hundred rupees ;	Seven rupees eight annas.
and	
when such amount or value exceeds seven thousand five hundred rupees, for every two hundred and fifty rupees, or part thereof, in excess of seven thousand five hundred rupees, up to ten thousand rupees ;	Fifteen rupees.
and	
when such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees,	Twenty-two rupees eight annas.
and	
when such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to fifty thousand rupees ;	Thirty rupees.
and	
when such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees ;	Thirty-seven rupees eight annas.
Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be ten thousand rupees,"	



6. In the third column in Article 6 in the same schedule to the same Act,—

(a) for the words "Four annas," opposite clause (a) in the second column, the words "Six annas" shall be substituted; and

(b) for the words "Eight annas," opposite the first item in clause (b) in the second column, the words "Twelve annas" shall be substituted, and for the words "One rupee," opposite the second item in that clause, the words "One rupee eight annas" shall be substituted.

7. For the entries above the proviso in the second column, and for the entries in the third column in Article 11 in the same schedule to the same Act, the following shall be substituted, namely:—

<p>"When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two thousand rupees, <i>on such amount or value up to ten thousand rupees,</i>"</p>	<p>Two per centum * *</p>
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and

<p>when such amount or value exceeds ten thousand rupees, * * <i>on the portion of such amount or value which is in excess of ten thousand rupees, up to fifty thousand rupees.</i></p>	<p>Three per centum * *</p>
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and

<p>when such amount or value exceeds fifty thousand rupees * * <i>on the portion of such amount or value which is in excess of fifty thousand rupees, upto a lakh of rupees.</i></p>	<p>Four per centum * *</p>
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and

<p>when such amount or value exceeds a lakh of rupees, <i>on the portion of such amount or value which is in excess of a lakh of rupees,</i></p>	<p>Five per centum * *</p>
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[Further amended by Act XI of 1935—  
see *infra*.]

8. Omitted—[Art. 12 of Sch. I amended by this section is re-enacted by s. 5 of Act XI of 1935; see *infra*.]

9. For the table of rates of *ad valorem* fees leviable on the institution of suits, at the end of the same schedule to the same Act, the table set forth in the schedule to this Act shall be substituted.

10. In Article 1 in the second schedule to the same Act—

(a) in clause (a) after the words “Municipal Commissioner” in the third entry in the second column the words “or member of a District Board” shall be inserted;

(b) (i) for the words “One anna” opposite clause (a) in the second column, the words “Two annas” shall be substituted;

(ii) for the words “Eight annas,” opposite clause (b) in the second column, the following shall be substituted, namely :—

“In the case of a complaint or charge of an offence presented to a criminal court one rupee, and in other cases twelve annas”; and

(iii) for the words “One rupee,” opposite clause (c) in the second column, the words “One rupee eight annas” shall be substituted.

11. For clause (d) in the second column in Article 1 in the same schedule to the same Act, and for the entries opposite that clause in the third column thereof the following clause and entries shall be substituted, namely :—

“(d) (i) When presented to the High Court under section 115 of the Code of Civil Procedure, 1908, for revision of an order—

(a) when the value of the suit to which the ... Five rupees. order relates does not exceed Rs. 1,000;

(b) when the value of the suit exceeds Rs 1,000... Ten rupees.

(ii) When presented to the High Court other- ... Two rupees. wise than under that section.

12. In the third column in Article 10 in the same schedule to the same Act,—

(1) for the words “Eight annas,” opposite clause (a) in the second column, the words “One rupee” shall be substituted; and

(2) for the words “One rupee,” opposite clause (b) in the second column, the words “One rupee eight annas” shall be substituted.

13. For article 11 in the same schedule to the same Act the following shall be substituted, namely :—

"11 Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree and is presented—

(a) (i)	to any Revenue Court or Executive Officer other than the High Court or Chief Controlling Revenue or Executive Authority.	Eight annas,
(ii)	to any Civil Court other than a High Court.	One rupee.
(b)	to a Chief Controlling Executive or Revenue Authority.	Two rupees.
(c)	to a High Court	... Five rupees."

14. Above the words "Five rupees," where they occur in the third column, opposite Articles 12 and 13 in the same schedule to the same Act, the words "Ten rupees" shall be inserted opposite Article 12 and the bracket between Articles 12 and 13 in the second column shall be omitted.

15. (1) The words "Ten rupees" in the third column, opposite Article 17 in the same schedule to the same Act, and the bracket opposite that article in the second column in the same schedule shall be omitted.

(2) In the third column in the said article,—

- (a) opposite entries i, ii, iv and vi, the words "Fifteen rupees" shall be inserted; and
- (b) opposite entries iii and v, the words "Twenty rupees" shall be inserted.

16. In section 71 of the Presidency Small Cause Courts Act, 1882,—

- (1) in clause (a) for the words "five hundred rupees" the words "fifty rupees" shall be substituted;
- (2) after clause (a) the following shall be inserted, namely :—
  - "(b) when the amount or value of the subject-matter exceeds fifty rupees, but does not exceed five hundred rupees—the sum of six rupees four annas and three annas in the rupee on the excess of such amount or value over fifty rupees ;"
- (3) clause (b) shall be renumbered as clause (c) and in that clause as renumbered for the words "sixty-two rupees eight annas" the words "ninety rupees ten annas" shall be substituted, and after the words "one anna" the words "six pies" shall be inserted.

17. Nothing in this Act shall apply to any probate, letters of administration or certificate in respect of which the fee payable under the law for the time being in force has been paid prior to the commencement of this Act, but which have not issued.

### THE SCHEDULE.

#### TABLE OF RATES OF *ad valorem* FEES LEVIABLE ON THE INSTITUTION OF SUITS.

(See section 9 of the Bengal Court-fees (Amendment) Act, 1922.)

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
...	5	0 6	140	150	16 4
5	10	0 12	150	160	18 0
10	15	1 2	160	170	19 2
15	20	1 8	170	180	20 4
20	25	1 14	180	190	21 6
25	30	2 4	190	200	22 8
30	35	2 10	200	210	23 10
35	40	3 0	210	220	24 12
40	45	3 6	220	230	25 14
45	50	3 12	230	240	27 0
50	55	4 2	240	250	28 2
55	60	4 8	250	260	29 4
60	65	4 14	260	270	30 6
65	70	5 4	270	280	31 8
70	75	5 10	280	290	32 10
75	80	6 2	290	300	33 12
80	85	6 10	300	310	34 14
85	90	7 2	310	320	36 0
90	95	7 10	320	330	37 2
95	100	8 2	330	340	38 4
100	110	9 12	340	350	39 6
110	120	11 6	350	360	40 8
120	130	13 0	360	370	41 10
130	140	14 10	370	380	42 12

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
380	390	43 14	770	780	87 12
390	400	45 0	780	790	88 14
400	410	46 2	790	800	90 0
410	420	47 4	800	810	91 2
420	430	48 6	810	820	92 4
430	440	49 8	820	830	93 6
440	450	50 10	830	840	94 8
450	460	51 12	840	850	95 10
460	470	52 14	850	860	96 12
470	480	54 0	860	870	97 14
480	490	55 2	870	880	99 0
490	500	56 4	880	890	100 2
500	510	57 6	890	900	101 4
510	520	58 8	900	910	102 6
520	530	59 10	910	920	103 8
530	540	60 12	920	930	104 10
540	550	61 14	930	940	105 12
550	560	63 0	940	950	106 14
560	570	64 2	950	960	108 0
570	580	65 4	960	970	109 2
580	590	66 6	970	980	110 4
590	600	67 8	980	990	111 6
600	610	68 10	990	1,000	112 8
610	620	69 12	1,000	1,100	120 0
620	630	70 14	1,100	1,200	127 8
630	640	72 0	1,200	1,300	135 0
640	650	73 2	1,300	1,400	142 8
650	660	74 4	1,400	1,500	150 0
660	670	75 6	1,500	1,600	157 8
670	680	76 8	1,600	1,700	165 0
680	690	77 10	1,700	1,800	172 8
690	700	78 12	1,800	1,900	180 0
700	710	79 14	1,900	2,000	187 8
710	720	81 0	2,000	2,100	195 0
720	730	82 2	2,100	2,200	202 8
730	740	83 4	2,200	2,300	210 0
740	750	84 6	2,300	2,400	217 8
750	760	85 8	2,400	2,500	225 0
760	770	86 10	2,500	2,600	232 8

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
2,600	2,700	240 0	6,500	6,600	532 8
2,700	2,800	247 8	6,600	6,700	540 0
2,800	2,900	255 0	6,700	6,800	547 8
2,900	3,000	262 8	6,800	6,900	555 0
3,000	3,100	270 0	6,900	7,000	562 8
3,100	3,200	277 8	7,000	7,100	570 0
3,200	3,300	285 0	7,100	7,200	577 8
3,300	3,400	292 8	7,200	7,300	585 0
3,400	3,500	300 0	7,300	7,400	592 8
3,500	3,600	307 8	7,400	7,500	600 0
3,600	3,700	315 0	7,500	7,750	615 0
3,700	3,800	322 8	7,750	8,000	630 0
3,800	3,900	330 0	8,000	8,250	645 8
3,900	4,000	337 8	8,250	8,500	660 0
4,000	4,100	345 0	8,500	8,750	675 8
4,100	4,200	352 8	8,750	9,000	690 0
4,200	4,300	360 0	9,000	9,250	705 8
4,300	4,400	367 8	9,250	9,500	720 0
4,400	4,500	375 0	9,500	9,750	735 8
4,500	4,600	382 8	9,750	10,000	750 0
4,600	4,700	390 0	10,000	10,500	772 8
4,700	4,800	397 8	10,500	11,000	795 0
4,800	4,900	405 0	11,000	11,500	817 8
4,900	5,000	412 8	11,500	12,000	840 0
5,000	5,100	420 0	12,000	12,500	862 8
5,100	5,200	427 8	12,500	13,000	885 0
5,200	5,300	435 0	13,000	13,500	907 8
5,300	5,400	442 8	13,500	14,000	930 0
5,400	5,500	450 0	14,000	14,500	952 8
5,500	5,600	457 8	14,500	15,000	975 0
5,600	5,700	465 0	15,000	15,500	997 8
5,700	5,800	472 8	15,500	16,000	1,020 0
5,800	5,900	480 0	16,000	16,500	1,042 8
5,900	6,000	487 8	16,500	17,000	1,065 0
6,000	6,100	495 0	17,000	17,500	1,087 8
6,100	6,200	502 8	17,500	18,000	1,110 0
6,200	6,300	510 0	18,000	18,500	1,132 8
6,300	6,400	517 8	18,500	19,000	1,155 0
6,400	6,500	525 0	19,000	19,500	1,177 8

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
19,500	20,000	1,200 0	50,000	55,000	2,137 8
20,000	21,000	1,230 0	55,000	60,000	2,175 0
21,000	22,000	1,260 0	60,000	65,000	2,212 8
22,000	23,000	1,290 0	65,000	70,000	2,250 0
23,000	24,000	1,320 0	70,000	75,000	2,287 8
24,000	25,000	1,350 0	75,000	80,000	2,325 0
25,000	26,000	1,380 0	80,000	85,000	2,362 8
26,000	27,000	1,410 0	85,000	90,000	2,400 0
27,000	28,000	1,440 0	90,000	95,000	2,437 8
28,000	29,000	1,470 0	95,000	1,00,000	2,475 0
29,000	30,000	1,500 0	1,00,000	1,05,000	2,512 8
30,000	31,000	1,530 0	1,05,000	1,10,000	2,550 0
31,000	32,000	1,560 0	1,10,000	1,15,000	2,587 8
32,000	33,000	1,590 0	1,15,000	1,20,000	2,625 0
33,000	34,000	1,620 0	1,20,000	1,25,000	2,662 8
34,000	35,000	1,650 0	1,25,000	1,30,000	2,700 0
35,000	36,000	1,680 0	1,30,000	1,35,000	2,737 8
36,000	37,000	1,710 0	1,35,000	1,40,000	2,775 0
37,000	38,000	1,740 0	1,40,000	1,45,000	2,812 8
38,000	39,000	1,770 0	1,45,000	1,50,000	2,850 0
39,000	40,000	1,800 0	1,50,000	1,55,000	2,887 8
40,000	41,000	1,830 0	1,55,000	1,60,000	2,925 0
41,000	42,000	1,860 0	1,60,000	1,65,000	2,962 8
42,000	43,000	1,890 0	1,65,000	1,70,000	3,000 0
43,000	44,000	1,920 0	1,70,000	1,75,000	3,037 8
44,000	45,000	1,950 0	1,75,000	1,80,000	3,075 0
45,000	46,000	1,980 0	1,80,000	1,85,000	3,112 8
46,000	47,000	2,010 0	1,85,000	1,90,000	3,150 0
47,000	48,000	2,040 0	1,90,000	1,95,000	3,187 8
48,000	49,000	2,070 0	1,95,000	2,00,000	3,225 0
49,000	50,000	2,100 0	2,00,000	2,05,000	3,262 8

and the fee increases at the rate of thirty-seven rupees eight annas for every five thousand rupees, or part thereof, up to a maximum fee of ten thousand rupees, for example—

Rs.	Rs.	A.	Rs.	Rs.	A.	Rs.	As.	A.
3,00,000	4,012	8	6,00,000	6,262	8	9,00,000	8,512	8
4,00,000	4,762	8	7,00,000	7,012	8	10,00,000	9,262	8
5,00,000	5,512	8	8,00,000	7,762	8	11,00,000	10,000	0

THE BENGAL COURT-FEES (AMENDMENT NO. II) ACT,  
1922.

PUBLISHED IN THE CALCUTTA GAZETTE OF THE 26TH JULY, 1922.

*An Act further to amend the Court-fees Act, 1870, with reference  
to the scale of Court-Fees in the Bengal.*

Whereas it is necessary further to amend the Court-fees Act, 1870, in its application to Bengal in the manner hereinafter appearing :

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Court-fees (Amendment No. II) Act, 1922.

(2) It extends to the whole of Bengal.

2. In Article 1 in the first schedule to the Court-fees Act, 1870 as amended by the Bengal Court-fees (Amendment) Act, 1922, hereinafter referred to as the said Act,—

- (a) the commas before and after the word “pleading” in the first column shall be omitted,
- (b) for the words “in value” in the first entry in the second column the words “or value” shall be substituted, and
- (c) the word “and” between the third and fourth entries in the second column shall be omitted.

3. (1) In the second column of Articles 11 and 12 in the first schedule to the said Act,—

- (a) for the words “but does not exceed ten thousand rupees” the words “on such amount or value up to ten thousand rupees” shall be substituted,
- (b) for the words “for the portion”, wherever they occur, the words “on the portion”, shall be substituted,
- (c) the words “but does not exceed fifty thousand rupees” and the words “but does not exceed a lakh of rupees” shall be omitted, and
- (d) after the words “in excess of ten thousand rupees” the words “up to fifty thousand rupees” and after the words “in excess of fifty thousand rupees” the words “up to a lakh of rupees” shall be added.

(2) In the third column of Article 11 in the first schedule to the said Act, the words “on such amount or value”, wherever they occur, shall be omitted.

(N. B.—Art. 12 re-enacted by Act XI of 1935—see *infra*)



4. The amendments set forth in sections 2 and 3 shall be deemed to have been made with effect from the commencement of the Bengal Court-fees (Amendment) Act, 1922.

## BENGAL ACT XI OF 1935.

### THE COURT-FEES (BENGAL SECOND AMENDMENT) ACT, 1935.

[PUBLISHED IN THE CALCUTTA GAZETTE OF THE 16TH MAY,  
1935.]

*An Act further to amend the Court-Fees Act, 1870.*

WHEREAS it is expedient to amend the Court-Fees Act, 1870, in its application to Bengal, in the manner hereinafter appearing ;

AND WHEREAS the previous sanction of the Governor-General has been obtained under sub-section (3) of section 80-A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

Short title, extent commencement and duration.	1. (1) This Act may be called the Court-fees (Bengal Second Amendment) Act, 1935.
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(2) It extends to the whole of Bengal.

(3) It shall come into force on such date as the Local Government may, by notification in the *Calcutta Gazette*, appoint.

(4) Clauses (a) and (b) of section 4 and sub-section (2) of section 5 shall remain in force for three years only and thereafter the Court-fees Act, 1870 shall have force as if it had not been amended by the said clauses and sub-section.

2. The Court-fees Act, 1870, hereinafter referred to as the said Application of Act.	Act, shall, in its application to Bengal, be amended in the manner hereinafter provided.
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Amendment of Schedule I, Article 8 of Act VII of 1870.	3. In Article 8 of the first schedule to the said Act, for the figures "1879" in the first column the figures "1899" shall be substituted.
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Amendment of Schedule I, Article 11.	4. In Article 11 of the first schedule to the said Act,—
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(a) after the words "in excess of a lakh of rupees" in the second column, the words "up to two lakhs and fifty thousand rupees" shall be inserted.

(b) in the second and third columns, before the proviso in the second column, the following shall be inserted, namely :—

"and

when such amount or value exceeds two lakhs and fifty thousand rupees, on the portion of such amount or value which is in excess of two lakhs and fifty thousand rupees up to three lakhs of rupees,	Five and a half per centum.
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and

when such amount or value exceeds three lakhs of rupees, on the portion of such amount or value which is in excess of three lakhs of rupees up to four lakhs of rupees,	Six per centum.
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and

when such amount or value exceeds four lakhs of rupees, on the portion of such amount or value which is in excess of four lakhs of rupees up to five lakhs of rupees,	Six and a half per centum.
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and

when such amount or value exceeds five lakhs of rupees, on the portion of such amount or value which is in excess of five lakhs of rupees : "	Seven per centum.
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and

(c) in the proviso, for the words and figures "the Succession Certificate Act, 1889" the words and figures "the Indian Succession Act, 1925" shall be substituted.

Substitution in schedule I of new Article 12.

5. (1) For Article 12 of the first schedule to the said Act the following article shall be substituted, namely :—

" 12. Certificate under the Indian Succession Act, 1925.

When the amount or value of any debt or security specified in the certificate under section 374 of the Act exceeds one thousand rupees, and	Two per centum on the first ten thousand rupees, three per centum on the next forty thousand rupees, four per centum on the next fifty thousand rupees and five per centum on the remainder of such amount or value.
when the aggregate amount or value of any debts or	In respect of such portion of the aggre-

securities specified in the certificate and of any debts or securities to which the certificate has been extended under section 376 of the Act exceeds one thousand rupees.

gate amount or value as consists of the amount or value of debts or securities so specified, the fee hereinbefore provided in that behalf in this article

and

three per centum on such portion of the first ten thousand rupees,

four and a half per centum on such portion of the next forty thousand rupees.

six per centum on such portion of the next fifty thousand rupees, and

seven and a half per centum on such portion of the remainder of such aggregate amount or value as consists of the amount or value of debts or securities to which the certificate has been extended.

*Note.*—(1) The amount of a debt is its amount, including interest, on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained.

(2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act and where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security or for both purposes, the value of the security is its

market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained,"

(2) In the third column of the said article as amended by sub-section (1),—

(a) after the words "five per centum" the following shall be inserted, namely:—

"on the next one lakh and fifty thousand rupees,  
five and a half per centum on the next fifty thousand rupees,  
six per centum on the next one lakh of rupees,  
six and a half per centum on the next one lakh of rupees,  
and  
seven per centum"

(b) after the words "seven and a half per centum" the following shall be inserted, namely:—

"on such portion of the next one lakh and fifty thousand rupees,  
eight and a quarter per centum on such portion of the next fifty thousand rupees,  
nine per centum on such portion of the next one lakh of rupees,  
nine and three-quarters per centum on such portion of the next one lakh of rupees,  
and  
ten and a half per centum".

6. In Article 18 of the second schedule to the said Act, for the words and figures "section 326 of the Code of Civil Procedure" the words and figures "paragraph 17 of the second schedule to the Code of Civil Procedure, 1908" shall be substituted.

7. Nothing in this Act shall apply to any probate, letters of administration or certificate under the Indian Succession Act, 1925, in respect of which the fee payable under the law for the time being in force has been paid before the commencement of this Act, but which has not issued.

Exemption of certain probates, etc.

## BENGAL ACT VII OF 1935.

## THE COURT-FEES (BENGAL AMENDMENT) ACT, 1935.

[PUBLISHED IN THE CALCUTTA GAZETTE OF THE  
16TH MAY, 1935.]

*An Act further to amend the Court-fees Act, 1870.*

WHEREAS it is expedient to revise the law relating to Court-fees in Bengal by amendment of the Court-fees Act, 1870, in its application to Bengal, in the manner hereinafter appearing;

AND WHEREAS the previous sanction of the Governor-General has been obtained under sub-section (3) of section 80-A of the Government of India Act to the passing of this Act;

It is hereby enacted as follows :—

Short title, extent and commencement.

1. (1) This Act may be called the Court-fees (Bengal Amendment) Act, 1935.

(2) It extends to the whole of Bengal.

(3) It shall come into force in whole or in part on such date as the Local Government may, by notification in the *Calcutta Gazette*, appoint and for this purpose different dates may be appointed for different provisions of this Act.

2. The Court-fees Act, 1870, hereinafter, referred to as the said Act, shall, in its application to Bengal, be amended in the manner hereinafter provided.

Substitution of new section for section 2 of Act VII of 1870.

3. For section 2 of the said Act the following section shall be substituted, namely :—

Definitions.

“ 2. In this Act, unless there is anything repugnant in the subject or context,—

(1) ‘appeal’ includes a cross-objection;

(2) ‘Chief Controlling Revenue authority’ means the Board of Revenue;

(3) ‘Collector’ includes any officer not below the rank of sub-deputy collector appointed by the Collector to perform the functions of a Collector under this Act;

(4) ‘suit’ includes an appeal from a decree except in section 8-A.”

4. In Chapter II of the said Act, for the heading “Fees in the High Courts and in the Courts of Small Causes at the Presidency Towns” the heading “Fees payable in Courts and in Public Offices” shall be substituted.

Amendment of heading of Chapter II.

**5.** In Chapter III of the said Act, for the heading "Fees in other Courts and in Public Offices" the heading "Computation of fees" shall be substituted.

**6.** (1) Section 6 of the said Act shall be transferred from Chapter III and inserted after section 5 in Chapter II and section 6 as thus transferred shall be re-numbered as sub-section (1) of section 6 and in that section as so re-numbered for the words "be paid" the words "has been paid" shall be substituted.

(2) To the said section as so re-numbered and amended the following sub-section shall be added, namely:—

"(2) Notwithstanding anything contained in sub-section (1) or in any other Act, a Court may receive a plaint or memorandum of appeal in respect of which an insufficient fee has been paid, subject to the following conditions, namely:—

(a) no such plaint or memorandum of appeal shall be registered unless the plaintiff or appellant has, before such date as the Court may have fixed in this behalf paid to the Court such reasonable sum on account of court-fee as the Court may direct;

(b) the Court shall reject the plaint or memorandum of appeal if the sum referred to in clause (a) is not paid before the date fixed by the Court."

Amendment of section 7.

**7.** In section 7 of the said Act,—

(1) clause (b) of paragraph iv shall be omitted;

(2) in paragraph iv, after the words "memorandum of appeal" the following words, figure and letter shall be inserted, namely:—

"subject to the provisions of section 8-C";

(3) for paragraph v the following paragraph shall be substituted, namely:—

"v. In suits for the possession of land, buildings or gardens—

(a) according to the value of the subject-matter, and such value shall be deemed to be fifteen times the nett profits which have arisen from the land, building or garden during the year next before the date of presenting the plaint, or if the Court sees reason to think that such profits have been wrongly estimated, fifteen times such amount as the Court may assess as such profits or according to the market-value of the land, building or garden,

whichever is lower;

(b) if, in the opinion of the Court, such profits are not readily ascertainable or assessable, or where there are on

such profits, according to the market-value of the land, building or garden ;

*Explanation.*—In this paragraph “building” includes a house, outhouse, stable, privy, urinal, shed, hut, wall and any other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatsoever ;” ;

(4) for paragraph vi the following paragraph shall be substituted, namely :—

“vi. In suits to enforce a right of pre-emption—according to the market-value of the land, building or garden in respect of which the right is claimed :

*Explanation.*—In this paragraph ‘building’ has the same meaning as in paragraph v.” ;

(5) after paragraph vi the following paragraph shall be inserted, namely :—

“vi-A. In suits for partition and separate possession of a share of joint family property or of joint property, or to enforce a right to a share in any property on the ground that it is joint family property or joint property—

if the plaintiff has been excluded from possession of the property of which he claims to be a co-parcener or co-owner, according to the market-value of the share in respect of which the suit is instituted.”.

Insertion of new sections 8A to 8F.

8. After section 8 of the said Act the following sections shall be inserted, namely :—

“8A. In every suit in which an *ad valorem* court-fee is payable under this Act on the plaint, the plaintiff shall file with the plaint a statement of particulars of the subject-matter of the suit and his own valuation thereof unless such particulars and the valuation are contained in the plaint. The statement shall be in such form and shall contain such particulars as may be prescribed by the Local Government by notification in the *Calcutta Gazette*. In every such suit the plaintiff shall also, if the Court so directs, file a duplicate copy of the plaint and of the said statement.

8B. (1) In every suit in which a court-fee is payable under this Act on the plaint or memorandum of appeal the Court shall, as soon as may be after the registration of the plaint or memoranadum of appeal, and in every case before proceeding to deliver judgment, record a finding whether a sufficient court-fee has been paid.

Procedure where insufficient court-fee is filed on plaint or memorandum of appeal.

(2) If the Court records a finding that an insufficient court-fee has been paid on the plaint or memorandum of appeal the Court shall—

- (a) stay all further proceedings in the suit until it has determined the proper amount of such court-fee payable and the plaintiff or the appellant, as the case may be, has paid such amount or until the date referred to in clause (b), as the case may be :

Provided that if the plaintiff or appellant gives, within such time as the Court may allow, security, to the satisfaction of the Court, for the payment of any additional amount for which he may be found liable the Court may proceed with the suit,

- (b) fix a date before which the plaintiff or appellant shall pay the amount of court-fee due from him, as determined by the Court under clause (a).

(3) If the plaintiff or appellant fails to give the security referred to in clause (a) of sub-section (2) or to pay the amount referred to in clause (b) of that sub-section within the time allowed, or before the date fixed, by the Court, as the case may be, the suit shall be dismissed.

8C. It the Court is of opinion that the subject-matter of any suit has been wrongly valued it may revise the valuation and determine the correct valuation and may hold such inquiry as it thinks fit for such purpose.

Inquiry as to valuation of suits.

8D. (1) For the purpose of an inquiry under section 8C the Court may depute, or issue a commission to, any suitable person to make such local or other investigation as may be necessary and to report thereon to the Court. Such report and any evidence recorded by such person shall be evidence in the inquiry.

Investigation to ascertain proper valuation.

(2) The Court may from time to time, direct such party to the suit as it thinks fit to deposit such sum as the Court thinks reasonable as the costs of the inquiry, and if the costs are not deposited within such time as the Court shall fix, may, notwithstanding anything contained in any other Act, dismiss the suit if such party is the plaintiff or the appellant and in any other case, may recover the costs as a public demand.

8E. (1) The Court, when making an inquiry under section 8C and any person making an investigation under section 8D shall have, respectively, for the purposes of such inquiry or investigation, the powers vested in a Court under the Code of Civil Procedure, 1908, in respect of the following matters, namely :—

Power of persons making inquiry under sections 8C and 8D.

- (a) enforcing the attendance of any person and examining him on oath or affirmation ;



(b) compelling the production of documents or material objects ;  
and

(c) issuing commissions for the examination of witnesses.

(2) An inquiry or investigation referred to in sub section (1) shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code.

8F. If in the result of an inquiry under section 8C the Court finds that the subject-matter of the suit has been undervalued the Court may order the party responsible for the undervaluation to pay all or any part of the costs of the inquiry.

Costs of inquiry as to valuation and refund of excess fee.

If in the result of such inquiry the Court finds that the subject-matter of the suit has not been undervalued the Court may, in its discretion, order that all or any part of such costs shall be paid by Government or by any party to the suit at whose instance the inquiry has been undertaken, and if any amount exceeding the proper amount of fee has been paid shall refund the excess amount so paid."

Repeal of sections 9 and 10.

9. Sections 9 and 10 of the said Act are hereby repealed.

Substitution of new section for section 11.

10. For section 11 of the said Act the following section shall be substituted, namely :—

"11. Where in any suit for mesne profits or for land and mesne profits or for an account, the fee which would have been payable if the suit had comprised the whole of the relief to which the Court finds the plaintiff to be entitled exceeds the fee actually paid, the Court shall require the plaintiff to pay an additional fee equal to the amount of the excess, and if such additional fee is not paid within such time as the Court may fix, the suit, or if a decree has previously been passed therein, so much of the claim as has not been so decreed, shall be dismissed :

Procedure in suits for mesne profits or accounts when amount found due exceeds amount claimed.

Provided that, where the additional fee is payable in respect of a portion of the claim which can be relinquished, that portion only shall be dismissed."

11. In paragraph ii of section 12 of the said Act, for the words and figures " and the provisions of section 10, paragraph ii, shall apply " the following shall be substituted, namely :—

Amendment of section 12.

"and thereafter :—

(a) if the party required to pay is the appellant or petitioner, the provisions of sub-sections (2) and (3) of section 8B shall, so far as may be, apply ;

- (b) if the party required to pay is the respondent or the opposite party, the provisions of sub-section (2) of section 8B shall, so far as may be, apply, and, if such party fails to pay the fee required before the date fixed by the Court, the Court shall recover the amount of such fee from him as a public demand :

*Explanation.*—For the purposes of this section a question relating to the classification of any suit for the purpose of section 7 shall not be deemed to be a question relating to valuation."

Substitution of new section for section 17. **12.** For section 17 of the said Act, the following section shall be substituted, namely :—

"17. (1) In any suit in which two or more separate and distinct causes of action are joined and separate and distinct reliefs are sought in respect of each, the plaintiff or memorandum of appeal shall be chargeable with the aggregate amount of the fees with which the plaintiffs or memoranda of appeal would be chargeable under this Act in separate suits instituted in respect of each such cause of action :

Multifarious suits.

Provided that nothing in this sub-section shall be deemed to affect any power conferred by or under the Code of Civil Procedure, 1908, to order separate trials.

(2) Where more reliefs than one based on the same cause of action are sought either jointly or in the alternative, the fee shall be paid according to the value of the relief in respect of which the largest fee is payable."

Amendment of section 19.

**13.** In section 19 of the said Act,—

(a) in paragraph i, after the words "Power-of-attorney" the words "or other written authority" shall be inserted ; and

(b) after paragraph xxiv the following paragraph shall be added, namely :—

"xxv. Petitions of appeal by Government servants or servants of a Court of Wards against orders of dismissal, reduction or suspension ; copies of such orders filed with such appeals, and applications for obtaining such copies."

Insertion of new section 34A.

**14.** After section 34 of the said Act, the following section shall be inserted, namely :—

"34A. Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Act, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired."

Enlargement of time.

Substitution of new  
section for section 35.

15. For section 35 of the said Act, the following section shall be substituted, namely :—

“35. (1) The Local Government may, from time to time subject to such conditions or restrictions as it may think fit to impose, by notification in the *Calcutta Gazette*, suspend the payment of or reduce or remit, in the whole of Bengal or in any part thereof, all or any of the fees mentioned in the first and second schedules to this Act annexed and may in like manner cancel or vary such order.

(2) The Local Government may, from time to time by rules, prescribe the manner in which any fee the payment of which is suspended under sub-section (1) may be realised and for this purpose direct that such fee may be recovered as a public demand.”

Amendment of Sche-  
dule II.

16. In Schedule II to the said Act,—

(1) in Article 17, after entry v the following entry shall be inserted, namely :—

“vA. for partition and separate possession of a share of joint family property or of joint property, or to enforce a right to a share in any property on the ground that it is joint family property or joint property if the plaintiff is in possession of the property of which he claims to be a co-parcener or co-owner : . . Fifteen rupees.”

(2) after Article 18 the following article shall be inserted, namely :—

“18A. Application under paragraph 20 of the Second Schedule to the Civil Procedure Code, 1908, to file an arbitration award, and memorandum of appeal from a decree passed under paragraph 21 of the said Schedule. . . Fifteen rupees.”

(3) after Article 21 the following article shall be inserted, namely :—

‘22. Petition.’

(a) questioning the election of any person as a Municipal Commissioner, when presented to a District Judge under section 36 of the Bengal Municipal Act, 1932 ;

b) questioning the election of any person as a member of a District Board or Local Board when presented to any authority appointed under clause (a) of section 138 of the Bengal Local Self-Government Act of 1885 to decide disputes relating to such elections. . . Fifteen rupees.”

# BIHAR AND ORISSA ACT (I OF 1922)

## THE BIHAR AND ORISSA COURT-FEES (AMENDMENT) ACT, 1922.

THE ASSENT OF THE GOVERNOR-GENERAL TO THIS ACT WAS  
PUBLISHED IN THE BIHAR AND ORISSA GAZETTE EXTRAORDINARY  
OF THE 21ST AUGUST, 1922.

*An Act to amend the Court-fees Act, 1870.*

Whereas it is expedient to amend the Court-fees Act, 1870, in its application to the Province of Bihar and Orissa in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bihar and Orissa Court-fees (Amendment) Act, 1922.

(2) It extends to the whole of Bihar and Orissa including the Santal Parganas.

(3) It shall come into force on the twenty-fourth day of August, 1922.

2. In paragraph 3 of section 4 of the Court-fees Act, 1870, as amended by subsequent legislation and hereinafter called the principal Act, for the word "two" shall be substituted the word "one".

3. In clause (a) of section 7 (v) of the principal Act, for the word "ten" shall be substituted the word "twenty" and in clause (b) of the said section for the word "five" shall be substituted the word "ten".

4. In section 17 of the principal Act, after the words "of appeal" in both places where they occur the words "or of cross objection" shall be inserted.

5. In section 18 of the principal Act, for the words "a fee of eight annas" the words "a fee of twelve annas" shall be substituted.

6. In item viii of section 19 of the principal Act, for the words "one thousand rupees" the words "two thousand rupees" shall be substituted.

7. (1) In article 1 of Schedule I of the principal Act, for the entry in the first column the following entry shall be substituted, namely;—

"1. Complaint, written statement, pleading, a set off, or counter-claim or memorandum of appeal or of cross objection, not otherwise provided for in this Act, presented to any Civil or Revenue Court except those mentioned in section 3."

(2) For the "proper fees" set out in the third column of the said Schedule I and shown opposite Article 1 in Schedule A of this Act, the "proper fees" shown against them in the second column of the said Schedule A shall be substituted.

(3) The proviso in Article 1 of the said Schedule I shall be omitted.

8. For the "proper fees" set out in Schedule I of the principal Act, for Articles 6, 7, 8 and 9 and shown in Schedule A of this Act, the "proper fees" shown against them in the second column of the said Schedule A shall be substituted.

9. For the entries above the proviso in the second column and for the entries in the third column, in Article 11 of Schedule I of the principal Act, the following shall be substituted, namely:—

"When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two thousand rupees, on such amount or value up to ten thousand rupees	Two per centum.
--	-----------------

and

When such amount or value exceeds ten thousand rupee, on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand rupees.	Three per centum.
---	-------------------

and

When such amount or value exceeds fifty thousand rupees, on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh of rupees.	Four per centum
---	-----------------

and

When such amount or value exceeds a lakh of rupees, on the portion of such amount or value which is in excess of one lakh of rupees.	Five per centum.
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10. For the entry in the second column of Article 12 of Schedule I of the principal Act, and for the first paragraph in the third column of the said Article, the following shall be substituted namely:—

"When the amount or value of any debt or security specified in the certificate under section 8 of the Act exceeds one thousand rupees, on such amount or value up to ten thousand rupees.	Two per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act, three per centum.
---	--

and

when such amount or value exceeds ten thousand rupees, on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand, rupees ;	Three per centum and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act, four-and-a-half per centum.
--	---

and

when such amount or value exceeds fifty thousand rupees, on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh of rupees ;	Four per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act, six per centum.
--	---

and  
when such amount or value exceeds a  
lakh of rupees, on the portion of  
such amount or value which is in  
excess of one lakh of rupees.

Five per centum, and on the amount  
or value of any debt or security to  
which the certificate is extended  
under section 10 of the Act, seven-  
and-a-half per centum "

11. For the table of rates of *ad valorem* fees annexed to Schedule I of the principal Act, the table set forth in Schedule B of this Act shall be substituted.

12. (1) In the first column of the said Schedule II after the words "memorandum of appeal" in Articles 5, 11, 17, 20 and 21 the words "or of cross objection" shall be inserted.

(2) For the "proper fees" set out in the said Schedule II, and shown in Schedule C of this Act, the "proper fees" shown against them in the second column of the said Schedule C shall be substituted.

13. Nothing in this Act shall apply to any probate, letters of administration or certificate under the Succession Certificate Act, 1889, in respect of which the fee payable under the law for the time being in force has been paid prior to the commencement of this Act, but which have not issued.

#### SCEHDULE A.

[See sections 7 (3) and 8 of the Bihar and Orissa Court-fees  
(Amendment) Act, 1922.]

Proper fees set out in Schedule I of the principal Act.		Proper fees to be substituted.
Article 1. ...	Twelve annas	... One rupee.
	Five rupees	... Seven rupees and eight annas.
	Ten rupees	... Fifteen rupees.
	Fifteen rupees	... Twenty-two rupees and eight annas.
	Twenty rupees	... Thirty rupees.
	Twenty rupees	... Thirty rupees.
	Twenty-five rupees	... Thirty-seven rupees and eight annas.
Article 6, ...	Four annas	... Six annas.
	Eight annas	... Twelve annas.
Article 7. ...	One rupee	... One rupee and eight annas.
	Eight annas	... Twelve annas.
	One rupee	... One rupee and eight annas.
	Four rupees	... Six rupees.
Article 8. ...	The amount of the duty chargeable on the original.	One and a half times the amount of the duty chargeable on the original.
	Eight annas	... Twelve annas.
Article 9. ...	Eight annas	... Twelve annas.

## SCHEDULE B.

TABLE OF RATES OF *Ad valorem* FEES LEVIABLE ON THE  
INSTITUTION OF SUITS.

[See section 11 of the Bihar and Orissa Court-fees  
(Amendment) Act, 1922].

When the amount or value of the sub- ject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the sub- ject-matter exceeds—	But does not exceed—	Proper fee
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
...	5	0 6	220	230	20 8
5	10	0 12	230	240	21 8
10	15	1 2	240	250	22 8
15	20	1 8	250	260	23 8
20	25	1 14	260	270	24 8
25	30	2 4	270	280	25 8
30	35	2 10	280	290	26 8
35	40	3 0	290	300	27 8
40	45	3 6	300	310	28 8
45	50	3 12	310	320	29 8
50	55	4 2	320	330	30 8
55	60	4 8	330	340	31 8
60	65	4 14	340	350	32 8
65	70	5 4	350	360	33 8
70	75	5 10	360	370	34 8
75	80	6 0	370	380	35 8
80	85	6 6	380	390	36 8
85	90	6 12	390	400	37 8
90	95	7 2	400	410	38 8
95	100	7 8	410	420	39 8
100	110	8 8	420	430	40 8
110	120	9 8	430	440	41 8
120	130	10 8	440	450	42 8
130	140	11 8	450	460	43 8
140	150	12 8	460	470	44 8
150	160	13 8	470	480	45 8
160	170	14 8	480	490	46 8
170	180	15 8	490	500	47 8
180	190	16 8	500	510	48 8
190	200	17 8	510	520	49 8
200	210	18 8	520	530	50 8
210	220	19 8	530	540	51 8

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
540	550	52 8	930	940	91 8
550	560	53 8	940	950	92 8
560	570	54 8	950	960	93 8
570	580	55 8	960	970	94 8
580	590	56 8	970	980	95 8
590	600	57 8	980	990	96 8
600	610	58 8	990	1,000	97 8
610	620	59 8	1,000	1,100	105 0
620	630	60 8	1,100	1,200	112 8
630	640	61 8	1,200	1,300	120 0
640	650	62 8	1,300	1,400	127 8
650	660	63 8	1,400	1,500	135 0
660	670	64 8	1,500	1,600	142 8
670	680	65 8	1,600	1,700	150 0
680	690	66 8	1,700	1,800	157 8
690	700	67 8	1,800	1,900	165 0
700	710	68 8	1,900	2,000	172 8
710	720	69 8	2,000	2,100	180 0
720	730	70 8	2,100	2,200	187 8
730	740	71 8	2,200	2,300	195 0
740	750	72 8	2,300	2,400	202 8
750	760	73 8	2,400	2,500	210 0
760	770	74 8	2,500	2,600	217 8
770	780	75 8	2,600	2,700	225 0
780	790	76 8	2,700	2,800	232 8
790	800	77 8	2,800	2,900	240 0
800	810	78 8	2,900	3,000	247 8
810	820	79 8	3,000	3,100	255 0
820	830	80 8	3,100	3,200	262 8
830	840	81 8	3,200	3,300	270 0
840	850	82 8	3,300	3,400	277 8
850	860	83 8	3,400	3,500	285 0
860	870	84 8	3,500	3,600	292 8
870	880	85 8	3,600	3,700	300 0
880	890	86 8	3,700	3,800	307 8
890	900	87 8	3,800	3,900	315 0
900	910	88 8	3,900	4,000	322 8
910	920	89 8	4,000	4,100	330 0
920	930	90 8	4,100	4,200	337 8



When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fees.		When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fees.	
Rs.	Rs.	Rs.	A.	Rs.	Rs.	Rs.	A.
4,200	4,300	345	0	15,500	16,000	967	8
4,300	4,400	352	8	16,000	16,500	990	0
4,400	4,500	360	0	16,500	17,000	1,012	8
4,500	4,600	367	8	17,000	17,500	1,035	0
4,600	4,700	375	0	17,500	18,000	1,057	8
4,700	4,800	382	8	18,000	18,500	1,080	0
4,800	4,900	390	0	18,500	19,000	1,102	8
4,900	5,000	397	8	19,000	19,500	1,125	0
5,000	5,250	412	8	19,500	20,000	1,147	8
5,250	5,500	427	8	20,000	21,000	1,177	8
5,500	5,750	442	8	21,000	22,000	1,207	8
5,750	6,000	457	8	22,000	23,000	1,237	8
6,000	6,250	472	8	23,000	24,000	1,267	8
6,250	6,500	487	8	24,000	25,000	1,297	8
6,500	6,750	502	8	25,000	26,000	1,327	8
6,750	7,000	517	8	26,000	27,000	1,357	8
7,000	7,250	532	8	27,000	28,000	1,387	8
7,250	7,500	547	8	28,000	29,000	1,417	8
7,500	7,750	562	8	29,000	30,000	1,447	8
7,750	8,000	577	8	30,000	32,000	1,477	8
8,000	8,250	592	8	32,000	34,000	1,507	8
8,250	8,500	607	8	34,000	36,000	1,537	8
8,500	8,750	622	8	36,000	38,000	1,567	8
8,750	9,000	637	8	38,000	40,000	1,597	8
9,000	9,250	652	8	40,000	42,000	1,627	8
9,250	9,500	667	8	42,000	44,000	1,657	8
9,500	9,750	682	8	44,000	46,000	1,687	8
9,750	10,000	697	8	46,000	48,000	1,717	8
10,000	10,500	720	0	48,000	50,000	1,747	8
10,500	11,000	742	8	50,000	55,000	1,785	0
11,000	11,500	765	0	55,000	60,000	1,822	8
11,500	12,000	787	8	60,000	65,000	1,860	0
12,000	12,500	810	0	65,000	70,000	1,897	8
12,500	13,000	832	8	70,000	75,000	1,935	0
13,000	13,500	855	0	75,000	80,000	1,972	8
13,500	14,000	877	8	80,000	85,000	2,010	0
14,000	14,500	900	0	85,000	90,000	2,047	8
14,500	15,000	922	8	90,000	95,000	2,085	0
15,000	15,500	945	0	95,000	1,00,000	2,122	8

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
1,00,000	1,05,000	2,160 0	1,55,000	1,60,000	2,572 8
1,05,000	1,10,000	2,197 8	1,60,000	1,65,000	2,610 0
1,10,000	1,15,000	2,235 0	1,65,000	1,70,000	2,617 8
1,15,000	1,20,000	2,272 8	1,70,000	1,75,000	2,685 0
1,20,000	1,25,000	2,310 0	1,75,000	1,80,000	2,722 8
1,25,000	1,30,000	2,347 8	1,80,000	1,85,000	2,760 0
1,30,000	1,35,000	2,385 0	1,85,000	1,90,000	2,797 8
1,35,000	1,40,000	2,422 8	1,90,000	1,95,000	2,835 0
1,40,000	1,45,000	2,460 0	1,95,000	2,00,000	2,872 8
1,45,000	1,50,000	2,497 8	2,00,000	2,05,000	2,910 0
1,50,000	1,55,000	2,535 0			

and the fee increases at the rate of thirty-seven rupees eight annas for every five thousand rupees, or part thereof for example, when the amount or value of subject-matter exceeds

Rs.	Rs.
3,00,000	3,660
4,00,000	4,410
5,00,000	5,160
6,00,000	5,910
7,00,000	6,660
8,00,000	7,410
9,00,000	8,160
10,00,000	8,910
11,00,000	9,660

# THE COURT-FEES ACT

## SCHEDULE C.

the section 12 (4) of the Bihar and Orissa Court-fees (Amendment) Act, 1922]

Proper fees set out in Schedule II of the principal Act.		Proper fees to be substituted.
Article 1	One anna ...	Two annas.
	Eight annas ...	Twelve annas.
	One rupee ...	One rupee and eight annas.
	Two rupees ...	Three rupees.
Article 1 A	Twelve annas in addition to any fee levied on the application under clause (a), clause (b) or clause (d) of Article I of this Schedule.	One rupee in addition to any fee levied on the application under clause (a), clause (b) or clause (d) of Article I of this Schedule.
Article 10	Eight annas ...	One rupee
	One rupee ...	Two rupees.
	Two rupees ...	Three rupees.
Article 11	Eight annas ...	One rupee.
	Two rupees ...	Four rupees.
Article 12	Five rupees ...	Ten rupees.
Article 14	Five rupees ...	Ten rupees.
Articles 17, 18	Ten rupees ...	Fifteen rupees.
Article 19.		
Article 20 and	Twenty rupees ...	Thirty rupees.

## BOMBAY ACT NO. II of 1932.

### PART III—COURT FEES ACT.

It extends to the whole of the Presidency of Bombay.

**13.** In section 7 of the Court Fees Act, 1870, in its application as amended of sec. 7 to the Presidency of Bombay, in this Part referred to as the said Act,—

- (a) to clause (d) of paragraph (iv) the words “or other consequential relief” shall be added;
- (b) after the word “appeal” in paragraph (iv) the words “with a minimum fee of rupees five in the case of suits falling under clause (c)” shall be inserted; and
- (c) in clauses (1), (2) and (3) of the proviso to paragraph (v) for the words “five”, “ten” and “ten” the words “seven and a half”, “fifteen” and “fifteen” shall, respectively, be substituted.

**13.** For Articles 1, 8, 11, 12 and 12-A of, and the Table of rates and amendment of Schedule I to the said Act the following shall be substituted namely :—

This Act has been extended by Bom. Act I of 1935 by which it is to remain in force up to 31st March 1936 unless extended for a further period.

## SCHEDULE I.

*Ad Valorem Fees.*

Number.		Proper Fee.
1. Plaint, written statement pleading a set-off or counter-claim or memorandum of appeal not otherwise provided for in this Act, or of cross objection presented to any Civil or Revenue Court except those mentioned in section 3.	When the amount or value of the subject-matter in dispute does not exceed five rupees.	Six annas.
	when such amount or value exceeds five rupees, for every five rupees, or part thereof, in excess of five rupees up to one hundred rupees.	Six annas,
	when such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees, up to one thousand rupees.	Twelve annas.
	when such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees up to five thousand rupees.	Five rupees.
	when such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees.	Fifteen rupee .
	when such amount or value exceeds ten thousand rupees for every five hundred rupees or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees.	Twenty-two rupees and eight annas.
	when such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees.	Thirty rupees.
	when such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof	Thirty rupees.

*Ad Valorem Fees—Contd.*

Number.		Proper Fee.
8. Copy of any document liable to stamp-duty under the Indian Stamp Act, 1899, when left by any party to a suit or proceeding in place of the original withdrawn.	<p>in excess of thirty thousand rupees up to fifty thousand rupees.</p> <p>when such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees.</p>	Thirty rupees.
	<p>Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be ten thousand rupees.</p> <p>(a) When the stamp duty chargeable on the original does not exceed one rupee,</p> <p>(b) In any other case.</p>	<p>The amount of the duty chargeable on the original.</p> <p>One rupee.</p>
11. Probate of a will or letters of administration with or without will annexed.	<p>When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees, on the part of the amount or value in excess of one thousand rupees, up to the ten thousand rupees.</p>	Two per centum.
	<p>When the amount or value of the property in respect of which the grant of probate or letters is made exceeds ten thousand rupees, on the part of the amount or value in excess of ten thousand rupees, up to fifty thousand rupees.</p>	Three per centum.
	<p>When the amount or value of the property in respect of which the grant of probate or letters is made exceeds fifty thousand rupees, on the part of the amount or value in excess of fifty thousand rupees, up to one lakh rupees.</p>	Four per centum.
	<p>When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one lakh of rupees, on the part of the amount or value in excess of one lakh of rupees, up to two lakhs of rupees.</p>	Four and a half per centum.

*Ad Valorem Fees—Contd.*

Number.		Proper Fee.
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two lakhs of rupees, on the part of the amount or value in excess of two lakhs of rupees, up to two lakhs and fifty thousand rupees.	Five per centum.
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two lakhs and fifty thousand rupees, on the part of the amount or value in excess of two lakhs and fifty thousand rupees, up to three lakhs of rupees.	Five and a half per centum.
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds three lakhs of rupees, on the part of the amount or value in excess of three lakhs of rupees up to four lakhs of rupees.	Six per centum.
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds four lakhs of rupees, on the part of the amount or value in excess of four lakhs of rupees, up to five lakhs of rupees.	Six and a half per centum.
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds five lakhs of rupees, on the part of the amount or value in excess of five lakhs of rupees : Provided that when, after the grant of a certificate under Part X of the Indian Succession Act, 1925, or under Bombay Regulation VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in	Seven per centum.

*Ad Valorem Fees—Contd.*

Number.		Proper Fee,
<p>12. Certificate under Part X of the Indian Succession Act, 1925.</p>	<p>respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.</p>	<p>The fee leviable in the case of a probate (Article 11) on the amount or value of any debt or security specified in the certificate under sec. 374 of the Act, and one and a half times this fee on the amount or value of any debt or security to which the certificate is extended under s. 376 of the Act.</p> <p>NOTE.—(1) The amount of a debt is its amount including interest on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained.</p> <p>(2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act; and where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security, or for both purposes, the value of the security is its market value on the day on which the inclusion of the security in the certificate is applied</p>

Number.	Proper fee.
12-A. Certificate under Bombay Regulation VIII of 1827.	for, so far as such value can be ascertained. The fee leviable in the case of a probate (Article 11) on the amount or value of the property in respect of which the certificate is granted.

## TABLE OF RATES.

*Table of rates of ad valorem fees leviable on the institution of suits.*

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
...	5	0 6	140	150	11 4
5	10	0 12	150	160	12 0
10	15	1 2	160	170	12 12
15	20	1 8	170	180	13 8
20	25	1 14	180	190	14 4
25	30	2 4	190	200	15 0
30	35	2 10	200	210	15 12
35	40	3 0	210	220	16 8
40	45	3 6	220	230	17 4
45	50	3 12	230	240	18 0
50	55	4 2	240	250	18 12
55	60	4 8	250	260	19 8
60	65	4 14	260	270	20 4
65	70	5 4	270	280	21 0
70	75	5 10	280	290	21 12
75	80	6 0	290	300	22 8
80	85	6 6	300	310	23 4
85	90	6 12	310	320	24 0
90	95	7 2	320	330	24 12
95	100	7 8	330	340	25 8
100	110	8 4	340	350	26 4
110	120	9 0	350	360	27 0
120	130	9 12	360	370	27 12
130	140	10 8	370	380	28 8



When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
380	390	29 4	780	790	59 4
390	400	30 0	790	800	60 0
400	410	30 12	800	810	60 12
410	420	31 8	810	820	61 8
420	430	32 4	820	830	62 4
430	440	33 0	830	840	63 0
440	450	33 12	840	850	63 12
450	460	34 8	850	860	64 8
460	470	35 4	860	870	65 4
470	480	36 0	870	880	66 0
480	490	36 12	880	890	66 12
490	500	37 8	890	900	67 8
500	510	38 4	900	910	68 4
510	520	39 0	910	920	69 0
520	530	39 12	920	930	69 12
530	540	40 8	930	940	70 8
540	550	41 4	940	950	71 4
550	560	42 0	950	960	72 0
560	570	42 12	960	970	72 12
570	580	43 8	970	980	73 8
580	590	44 4	980	990	74 4
590	600	45 0	990	1,000	75 0
600	610	45 12	1,000	1,100	80 0
610	620	46 8	1,100	1,200	85 0
620	630	47 4	1,200	1,300	90 0
630	640	48 0	1,300	1,400	95 0
640	650	48 12	1,400	1,500	100 0
650	660	49 8	1,500	1,600	105 0
660	670	50 4	1,600	1,700	110 0
670	680	51 0	1,700	1,800	115 0
680	690	51 12	1,800	1,900	120 0
690	700	52 8	1,900	2,000	125 0
700	710	53 4	2,000	2,100	130 0
710	720	54 0	2,100	2,200	135 0
720	730	54 12	2,200	2,300	140 0
730	740	55 8	2,300	2,400	145 0
740	750	56 4	2,400	2,500	150 0
750	760	57 0	2,500	2,600	155 0
760	770	57 12	2,600	2,700	160 0
770	780	58 8	2,700	2,800	165 0

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
2,800	2,900	170 0	9,750	10,000	575 0
2,900	3,000	175 0	10,000	10,500	597 8
3,000	3,100	180 0	10,500	11,000	620 0
3,100	3,200	185 0	11,000	11,500	642 8
3,200	3,300	190 0	11,500	12,000	665 0
3,300	3,400	195 0	12,000	12,500	687 8
3,400	3,500	200 0	12,500	13,000	710 0
3,500	3,600	205 0	13,000	13,500	732 8
3,600	3,700	210 0	13,500	14,000	755 0
3,700	3,800	215 0	14,000	14,500	777 8
3,800	3,900	220 0	14,500	15,000	800 0
3,900	4,000	225 0	15,000	15,500	822 8
4,000	4,100	230 0	15,500	16,000	845 0
4,100	4,200	235 0	16,000	16,500	867 8
4,200	4,300	240 0	16,500	17,000	890 0
4,300	4,400	245 0	17,000	17,500	912 8
4,400	4,500	250 0	17,500	18,000	935 0
4,500	4,600	255 0	18,000	18,500	957 8
4,600	4,700	260 0	18,500	19,000	980 0
4,700	4,800	265 0	19,000	19,500	1,002 8
4,800	4,900	270 0	19,500	20,000	1,025 0
4,900	5,000	275 0	20,000	21,000	1,055 0
5,000	5,250	290 0	21,000	22,000	1,085 0
5,250	5,500	305 0	22,000	23,000	1,115 0
5,500	5,750	320 0	23,000	24,000	1,145 0
5,750	6,000	335 0	24,000	25,000	1,175 0
6,000	6,250	350 0	25,000	26,000	1,205 0
6,250	6,500	365 0	26,000	27,000	1,235 0
6,500	6,750	380 0	27,000	28,000	1,265 0
6,750	7,000	395 0	28,000	29,000	1,295 0
7,000	7,250	410 0	29,000	30,000	1,325 0
7,250	7,500	425 0	30,000	32,000	1,355 0
7,500	7,750	440 0	32,000	34,000	1,385 0
7,750	8,000	455 0	34,000	36,000	1,415 0
8,000	8,250	470 0	36,000	38,000	1,445 0
8,250	8,500	485 0	38,000	40,000	1,475 0
8,500	8,750	500 0	40,000	42,000	1,505 0
8,750	9,000	515 0	42,000	44,000	1,535 0
9,000	9,250	530 0	44,000	46,000	1,565 0
9,250	9,500	545 0	46,000	48,000	1,595 0
9,500	9,750	560 0	48,000	50,000	1,625 0

and the fee increases at the rate of thirty rupees for every five thousand rupees, or part thereof, up to a maximum of ten thousand rupees, for example—

Rs.	Rs.	A.
1,00,000	1,925	0
2,00,000	2,525	0
3,00,000	3,125	0
4,00,000	3,725	0
5,00,000	4,325	0
6,00,000	4,925	0
7,00,000	5,525	0
8,00,000	6,125	0
9,00,000	6,725	0
10,00,000	7,325	0
11,00,000	7,925	0
12,00,000	8,525	0
13,00,000	9,125	0
14,00,000	9,725	0
15,00,000	10,000	0

Amendment of Schedule II to Act VIII of 1870.

14. For Articles 1, 6, 7, 12, 14, 17, 18, 19, 20 and 21 of Schedule II to the said Act the following shall be substituted, namely:—

#### SCHEDULE II.

##### *Fixed Fees.*

Number.		Proper fee.
1. Application petition.	or (a) When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings : or when presented to any officer of land revenue by any person holding temporarily-settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement. or when presented to any Municipal Commissioner under any Act for the time	Two annas

*Fixed Fees—Contd.*

Number.		Proper fee.
	<p>being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement.</p> <p>or when presented to any Civil Court other than a principal Civil Court of original jurisdiction, or to any Court of Small Causes constituted under the Provincial Small Causes Courts Act, 1887, or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees, not being an application for assistance under section 86 of the Bombay Land Revenue Code, 1879 :</p> <p>or when presented to any Civil, Criminal or Revenue Court, or to any Board or executive officer for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court, Board or officer, or of any other document on record in such Court or office.</p> <p>(aa) When presented to a Collector or other officer of revenue for assistance under section 86 of the Bombay Land Revenue Code, 1879.</p> <p>(b) When containing a complaint or charge of any offence other than an offence for which police officers may, under the Criminal Procedure Code, 1898, arrest without warrant, and presented to any Criminal Court :</p> <p>or when presented to a Civil, Criminal or Revenue Court, or to a Collector, or any Revenue officer having jurisdiction equal or subordinate</p>	<p></p> <p></p> <p></p> <p></p> <p></p> <p>Four annas.</p> <p>Eight annas.</p>

*Fixed Fees—Contd.*

Number.		Proper fee.
<p>6. Bail bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, 1898, or the Code of Civil Procedure, 1908, and not otherwise provided for by this Act.</p> <p>7. Undertaking under section 49 of the Indian Divorce Act, 1869.</p> <p>12. Caveat.</p> <p>14. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866 (XXI of 1866).</p> <p>17. Plaint or memorandum of appeal in each of the following suits :—</p>	<p>to a Collector, or to any Magistrate in his executive capacity and not otherwise provided for by the Act : or to deposit in Court revenue or rent : or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant.</p> <p>(c) When presented to a Chief Commissioner or other Chief Controlling Revenue or Executive Authority or to a Commissioner of Revenue or Circuit, or to any chief officer charged with the executive administration of a division and not otherwise provided for by this Act.</p> <p>(d) When presented to a High Court.</p> <p>When the amount or value of the property involved does not exceed two thousand rupees, When the amount or value of the property involved exceeds two thousand rupees.</p>	<p>Two rupees.</p> <p>Four rupees.</p> <p>One rupee.</p> <p>One rupee.</p> <p>Five rupees.</p> <p>Ten rupees.</p> <p>Ten rupees.</p>

*Fixed Fees—Contd.*

Number.		Proper fee.
(i) to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court ;	When the amount or value of the property involved does not exceed five hundred rupees.	Ten rupees.
(ii) to alter or cancel any entry in a register of the names of proprietors of revenue paying estates ; and	When the amount or value of the property involved exceeds five hundred rupees.	Fifteen rupees.
(iii) to obtain a declaratory decree or order where no consequential relief is prayed ;		Fifteen rupees.
(iv) to set aside alienation ;		Fifteen rupees.
(v) to set aside a decree or award ;	When the amount or value of the property involved does not exceed five hundred rupees.	Ten rupees.
	When the amount or value of the property involved exceeds five hundred rupees.	Fifteen rupees.
(vi) to set aside an adoption ; and		Fifteen rupees.
(vii) any other suit where it is not possible to estimate at a money value the subject-matter in dispute and which is not otherwise provided for by the Act.		Fifteen rupees.
18. Application—		Ten rupees.
(a) under paragraph 17 of the Second Schedule to the Code of Civil Procedure, 1908 ;		
(b) for the probate or letters of administration or for revocation thereof under the Indian Succession Act, 1925.	When the amount or value of the estate does not exceed two thousand rupees	Two rupees.
	When it exceeds two thousand rupees, but does not exceed five thousand rupees.	Five rupees.
(c) for a certificate under Part X of the Indian Succession Act, 1925, or Bombay Regulation, VIII of 1827 ;	When it exceeds five thousand rupees.	Ten rupees.
(d) for opinion or advice or for discharge from a		Ten rupees.

*Fixed Fees—Contd.*

Number.		Proper fee.
Trust or for appointment of Trustees, under sections 34, 72, 73 or 74 of the Indian Trusts Act, 1882;		
(e) for the winding up of a company, under section 166 of the Indian Companies Act, 1913.		Ten rupees.
(f) under Rule 58 of Order XXI of the Code of Civil Procedure, 1908, regarding a claim to attached property,	When the amount or value of the property exceeds five hundred rupees.	Ten rupees.
19. Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908.		Twenty rupees.
20. Every petition under the Indian Divorce Act, 1869, except petition under section 44 of that Act and every memorandum of appeal under section 55 of that Act.		Thirty rupees.
21. Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1865.		Thirty rupees,

**CENTRAL PROVINCES ACT No. XVI OF 1935****THE COURT-FEES (CENTRAL PROVINCES AMENDMENT) ACT, 1935.**

*An Act to amend the Court-Fees Act, 1870, with reference to the scale of court-fees in the Central Provinces.*

Whereas it is expedient to revise the scale of court-fees for the Central Provinces by amendment of the Court-Fees Act, 1870, in its application to the Central Provinces, in the manner hereinafter appearing ;

Preamble.

And Whereas the previous sanction of the Governor required under section 80-C of the Government of India Act has been obtained to the passing of this Act ;

It is hereby enacted as follows :

Short title, com- 1. (1) This Act may be called the  
mencement and dura- Court Fees (Central Provinces Amendment)  
tion, Act, 1935.

(2) It shall come into force on such date as the local Govern-  
ment may, by notification, appoint in this behalf and shall remain in  
force to the 31st day of March 1943.

2. The Court Fees Act, 1870 (hereinafter referred to as the  
Application of Act said Act), shall be amended in its application  
VII of 1870. to Central Provinces, in the manner herein-  
after provided.

Amendment of section  
7, Act VII of 1870.

3. In section 7 of the said Act—

(a) after the word “ appeal ” in paragraph iv, the words “ with  
a minimum fee of rupees five in the case of suits falling  
under clause (c) ” shall be inserted ;

(b) in clause (a) of paragraph v, between the words “ or ”  
and “ forms part ”, the words “ where the land ” shall  
be inserted ;

(c) in clause (b) of paragraph v—

(i) between the words “ or ” and “ forms part ”, the  
words “ where the land ” shall be inserted ; and

(ii) for the word “ five ” the words “ seven and half ”  
shall be substituted ; and

(d) for paragraph ix, the following paragraph shall be substi-  
tuted, namely :—

“ ix. (a) In suits against a mortgagee for the recovery of the  
property mortgaged,—

according to the principal money expressed to be secured  
by the instrument of mortgage ; and

(b) in suits by a mortgagee to foreclose the mortgage, or,  
where the mortgage is made by conditional sale, to have  
the sale declared absolute,—

according to the amount claimed as due at the date of  
presenting the plaint.”

Amendment of Article  
1, Schedule I, Act VII  
of 1870.

4. In Schedule I to the said Act—

(a) before the word “ presented ” in the first column of Article 1,  
the words “ in any suit between landlord and tenant for an arrear of  
rent ” shall be inserted ;



(b) after Article 1, the following Article shall be inserted, namely :—

<p>" 1-A. Plaint, written statement pleading a set-off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) or of cross-objection presented to any Civil or Revenue Court except those mentioned in section 3 in suits other than those provided for in Article 1.</p>	When the amount or value of the subject-matter in dispute does not exceed five rupees	Six annas.
	When such amount or value exceeds five rupees, for every five rupees or part thereof, in excess of five rupees, up to one hundred rupees.	Six annas.
	When such amount or value exceeds one hundred rupees, for every ten rupees or part thereof, in excess of one hundred rupees, up to one thousand rupees.	Twelve annas.
	When such amount or value exceeds one thousand rupees, for every one hundred rupees or part thereof, in excess of one thousand rupees, up to five thousand rupees.	Six rupees.
	When such amount or value exceeds five thousand rupees for every two hundred rupees or part thereof, in excess of five thousand rupees, up to ten thousand rupees.	Ten rupees.
	When such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof in excess of ten thousand rupees, up to twenty thousand rupees.	Twenty rupees.
	When such amount or value exceeds twenty thousand rupees, for every one thousand rupees or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees.	Thirty rupees.
	When such amount or value exceeds thirty thousand rupees, for every two thousand rupees or part thereof in excess of thirty thousand rupees, up to fifty thousand rupees.	Thirty rupees.

When such amount or value exceeds fifty thousand rupees, for every five thousand rupees or part thereof, in excess of fifty thousand rupees :	Thirty rupees.
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Provided that the maximum fee leviable shall not exceed five thousand rupees";
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(c) in the third column of Article 6 for the words "Four annas" opposite clause (a), the words "Six annas", and for the words "Eight annas" opposite clause (b), the words "Twelve annas" shall be substituted ;

Amendment of Article 6, clause (a) and (b) Schedule I, Act VII of 1870.

(d) in the third column of Article 7 for the words "Eight annas" opposite clause (a), the words "Twelve annas", and for the words "One rupee" opposite clause (b), the words "One rupee and eight annas" shall be substituted ;

Amendment of Article 7, Schedule I, Act VII of 1870.

(e) for Articles 11 and 12 and the entries in the second and third columns thereof, the following Articles and entries shall be substituted, namely :—

Amendment of Articles 11 and 12, Schedule I, Act VII of 1870.

" 11. Probate of a will or letters of administration with or without will annexed.

When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees but does not exceed five thousand rupees.
--

Two per centum on such amount or value.
---

When such amount or value exceeds five thousand rupees but does not exceed ten thousand rupees,
---

One hundred rupees plus two and a half per centum on the amount or value in excess of five thousand rupees,
---

When such amount or value exceeds ten thousand rupees,
--

Two hundred and fifty rupees plus three per centum on the amount or value in excess of ten thousand rupees ;
--

Provided that when after the grant of a certificate under Part X of the Indian Succession Act, 1925, or under Bombay Regulation

VIII of 1827 in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.

12. Certificate under Part X of the Indian Succession Act, 1925, (XXXIX of 1925).

When the amount or value of any debt or security specified in the certificate under section 374 of the Act exceeds one thousand rupees but does not exceed five thousand rupees.

Two per centum on such amount or value and three per centum on the amount of any debt or security to which the certificate is extended under section 376 of the Act.

When such amount or value exceeds five thousand rupees but does not exceed ten thousand rupees.

One hundred rupees plus two and a half per centum on the amount or value in excess of five thousand rupees, and four and a half per centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act.

When such amount or value exceeds ten thousand rupees.

Two hundred and fifty rupees plus three per centum on the amount or value in excess of ten thousand rupees and seven and a half per centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act";

Amendment of Table of rates of *ad valorem* fees.

(f) for the Table of rates of *ad valorem* fees leviable on the institution of suits the following Table shall be substituted, namely :—

## TABLE OF RATES.

*Table of rates of ad valorem fees leviable on the institution of suits.*

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A	Rs.	Rs.	Rs. A.
...	5	0 6	260	270	20 4
5	10	0 12	270	280	21 0
10	15	1 2	280	290	21 12
15	20	1 8	290	300	22 8
20	25	1 14	300	310	23 4
25	30	2 4	310	320	24 0
30	35	2 10	320	330	24 12
35	40	3 0	330	340	25 8
40	45	3 6	340	350	26 4
45	50	3 12	350	360	27 0
50	55	4 2	360	370	27 12
55	60	4 8	370	380	28 8
60	65	4 14	380	390	29 4
65	70	5 4	390	400	30 0
70	75	5 10	400	410	30 12
75	80	6 0	410	420	31 8
80	85	6 6	420	430	32 4
85	90	6 12	430	440	33 0
90	95	7 2	440	450	33 12
95	100	7 8	450	460	34 8
100	110	8 4	460	470	35 4
110	120	9 0	470	480	36 0
120	130	9 12	480	490	36 12
130	140	10 8	490	500	37 8
140	150	11 4	500	510	38 4
150	160	12 0	510	520	39 0
160	170	12 12	520	530	39 12
170	180	13 8	530	540	40 8
180	190	14 4	540	550	41 4
190	200	15 0	550	560	42 0
200	210	15 12	560	570	42 12
210	220	16 8	570	580	43 8
220	230	17 4	580	590	44 4
230	240	18 0	590	600	45 0
240	250	18 12	600	610	45 12
250	260	19 8	610	620	46 8

When the amount or value of the sub-ject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the sub-ject-matter exceeds—	But does not exceed—	Proper fee.
R <sup>s</sup> .	R <sup>s</sup> .	R <sup>s</sup> . A.	R <sup>s</sup> .	R <sup>s</sup> .	R <sup>s</sup> . A.
620	630	47 4	1,100	1,200	87 0
630	640	48 0	1,200	1,300	93 0
640	650	48 12	1,300	1,400	99 0
650	660	49 8	1,400	1,500	105 0
660	670	50 4	1,500	1,600	111 0
670	680	51 0	1,600	1,700	117 0
680	690	51 12	1,700	1,800	123 0
690	700	52 8	1,800	1,900	129 0
700	710	53 4	1,900	2,000	135 0
710	720	54 0	2,000	2,100	141 0
720	730	54 12	2,100	2,200	147 0
730	740	55 8	2,200	2,300	153 0
740	750	56 4	2,300	2,400	159 0
750	760	57 0	2,400	2,500	165 0
760	770	57 12	2,500	2,600	171 0
770	780	58 8	2,600	2,700	177 0
780	790	59 4	2,700	2,800	183 0
790	800	60 0	2,800	2,900	189 0
800	810	60 12	2,900	3,000	195 0
810	820	61 8	3,000	3,100	201 0
820	830	62 4	3,100	3,200	207 0
830	840	63 0	3,200	3,300	213 0
840	850	63 12	3,300	3,400	219 0
850	860	64 8	3,400	3,500	225 0
860	870	65 4	3,500	3,600	231 0
870	880	66 0	3,600	3,700	237 0
880	890	66 12	3,700	3,800	243 0
890	900	67 8	3,800	3,900	249 0
900	910	68 4	3,900	4,000	255 0
910	920	69 0	4,000	4,100	261 0
920	930	69 12	4,100	4,200	267 0
930	940	70 8	4,200	4,300	273 0
940	950	71 4	4,300	4,400	279 0
950	960	72 0	4,400	4,500	285 0
960	970	72 12	4,500	4,600	291 0
970	980	73 8	4,600	4,700	297 0
980	990	74 4	4,700	4,800	303 0
990	1,000	75 0	4,800	4,900	309 0
1,000	1,100	81 0	4,900	5,000	315 0

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
5,000	5,200	325 0	14,000	14,500	745 0
5,200	5,400	335 0	14,500	15,000	765 0
5,400	5,600	345 0	15,000	15,500	785 0
5,600	5,800	355 0	15,500	16,000	805 0
5,800	6,000	365 0	16,000	16,500	825 0
6,000	6,200	375 0	16,500	17,000	845 0
6,200	6,400	385 0	17,000	17,500	865 0
6,400	6,600	395 0	17,500	18,000	885 0
6,600	6,800	405 0	18,000	18,500	905 0
6,800	7,000	415 0	18,500	19,000	925 0
7,000	7,200	425 0	19,000	19,500	945 0
7,200	7,400	435 0	19,500	20,000	965 0
7,400	7,600	445 0	20,000	21,000	995 0
7,600	7,800	455 0	21,000	22,000	1,025 0
7,800	8,000	465 0	22,000	23,000	1,055 0
8,000	8,200	475 0	23,000	24,000	1,085 0
8,200	8,400	485 0	24,000	25,000	1,115 0
8,400	8,600	495 0	25,000	26,000	1,145 0
8,600	8,800	505 0	26,000	27,000	1,175 0
8,800	9,000	515 0	27,000	28,000	1,205 0
9,000	9,200	525 0	28,000	29,000	1,235 0
9,200	9,400	535 0	29,000	30,000	1,265 0
9,400	9,600	545 0	30,000	32,000	1,295 0
9,600	9,800	555 0	32,000	34,000	1,325 0
9,800	10,000	565 0	34,000	36,000	1,355 0
10,000	10,500	585 0	36,000	38,000	1,385 0
10,500	11,000	605 0	38,000	40,000	1,415 0
11,000	11,500	625 0	40,000	42,000	1,445 0
11,500	12,000	645 0	42,000	44,000	1,475 0
12,000	12,500	665 0	44,000	46,000	1,505 0
12,500	13,000	685 0	46,000	48,000	1,535 0
13,000	13,500	705 0	48,000	50,000	1,565 0
13,500	14,000	725 0			

When the amount or value of the subject-matter exceeds fifty thousand rupees, for every five thousand rupees or part thereof in excess of fifty thousand rupees.

Thirty rupees.

Provided that the maximum fee  
leviable shall not exceed five  
thousand rupees."

# 5. In Schedule II to the said Act—

Amendment of Schedule II, Article I, clause (a), Act VII of 1870.

(a) in the third column of Article 1, for the words "One anna" opposite clause (a), the words "Two annas" shall be substituted;

(b) for clause (b) of Article 1 in the second column and the entry opposite it in the third column, the following clause and entries shall be substituted, namely:—

Amendment of Schedule II, Article 1, clause (b), Act VII of 1870.

" (b) When containing a complaint of charge of any offence other than an offence for which police officers may, under the Code of Criminal Procedure, 1898, arrest without warrant, and presented to any Criminal Court;	Twelve annas.
or for orders of arrest or attachment before judgment or for temporary injunctions;	Two rupees.
or for compensation for arrest or attachment before judgment or in respect of a temporary injunction obtained on insufficient grounds:	Two rupees.
or for the appointment of a receiver in a case in which the applicant has no present right of possession of the properties in dispute;	Five rupees.
or for setting aside decrees passed <i>ex parte</i> and for review of orders dismissing suits for default;	Twelve annas.
or when presented to a Civil, Criminal or Revenue Court, or to a Collector, or any Revenue Officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act;	Twelve annas.
or to deposit in Court revenue or rent;	Eight annas.
or for determination by a Court of the amount of compensation to be paid by landlord to his tenant."	Eight annas.

Amendment of Schedule II, Article 1, clauses (c) and (d), Act VII of 1870.

(c) for clauses (c) and (d) in the second column and for the entries in the third column opposite these clauses, the following clauses and entries have been substituted, namely :—

“(c) When presented to a Commissioner of Revenue or to any Chief Officer charged with the executive administration of a division, and not otherwise provided for by this Act.	One rupee and eight annas.
(d) When presented to a Chief Controlling Revenue Authority or Executive Authority and not otherwise provided for by this Act.	Two rupees
(e) When presented to the Court of the Judicial Commissioner—	
(i) otherwise than under section 25 of the Provincial Small Causes Courts Act, 1887, or sec. 115 of the Code of Civil Procedure, 1908 ;	Two rupees
(ii) under section 25 of the Provincial Small Causes Courts Act, 1887 ;	Five rupees.
(iii) under sec 115 of the Code of Civil Procedure, 1908.	Five rupees.

(d) in the third column of Article 10, the words “Eight annas” opposite clause (a), the words “Twelve annas”, and for the words “Two rupees” opposite clause (c), the words “Two rupees and eight annas” shall be substituted ;

(e) in the third column of Article 11, for the words “Eight annas” opposite clause (a), the words “One rupee”, and for the words “Two rupees” opposite clause (b), the words “Four rupees” shall be substituted ;

Amendment of Schedule II, Articles 17, 18 and 19, Act VII of 1870,

(f) for Articles 17, 18 and 19, the following Articles shall be substituted, namely :—



" 17. Plaint or memorandum of appeal in each of the following suits :—

- |   |                   |
|---|-------------------|
| (i) to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court ;                    | } Fifteen rupees. |
| (ii) to alter or cancel any entry in a register of the names of proprietors or revenue-paying estates ;   |                   |
| (iii) to obtain a declaratory decree where no consequential relief is prayed ;  |                   |
| (iv) to set aside an award ;  | } Fifteen rupees. |
| (v) to set aside an adoption ;  |                   |
| (vi) every other suit where it is not possible to estimate at a money value the subject-matter in dispute, and which is not otherwise provided for by this Act. |                   |

18. Applications—

- |  |             |
|--|-------------|
| (a) under paragraph 17 or 20 of the Second Schedule to the Code of Civil Procedure, 1908 (V of 1908) ;   | One rupee.  |
| (b) for opinion or advice or for discharge from a trust, or for appointment of new trustees under section 34, 72, 73 or 74 of the Indian Trusts Act, 1882 (II of 1882) ; | Ten rupees. |
| (c) for winding up of a company, under section 166 of the Indian Companies Act, 1913 (VII of 1913) ;   | Ten rupees. |
| (d) for the appointment or declaration of a person as guardian of the person or property or both, of minors, under the Guardians and Wards Act, 1890 (VIII of 1890).     | Two rupees. |

19. Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908, Order 36, Rule (1).	Fifteen rupees."
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6. Nothing in this Act shall apply to any probate, letters of administration or certificate in respect of which the fee payable under the law for the time being in force has been paid prior to the commencement of this Act but which have not been issued.

**MADRAS ACT V OF 1922.**

PASSED BY THE LEGISLATIVE COUNCIL OF MADRAS.

*Received the assent of the Governor on the 30th March 1922 and that of the Governor General on the 30th April 1922 ; the assent of the Governor-General was first published in the "Fort St. George Gazette" of the 18th April 1922.*

*An Act to amend the Court-Fees Act, 1870.*

Whereas it is expedient to amend the Court-Fees Act, 1870, in its application to the Presidency of Madras ; It is hereby enacted as follows :—

1. (a) This Act may be called the Madras Court-Fees (Amendment) Act, 1922.

(b) It extends to the whole of the Presidency of Madras.

2. (1) In this Act 'the principal Act' shall mean 'the Court-Fees Act, 1870'.

(2) In this Act and in the principal Act, unless there is anything repugnant in the subject or context, 'Memorandum of appeal' shall include memorandum of cross-objection.

3. In the second paragraph of section 5 of the principal Act, the words 'Registrar' and 'Chief Judge' shall be substituted for 'clerk of the Court' and 'first Judge' respectively.

4. In section 7 of the principal Act the words "except suits for relief under section 14 of the Religious Endowments Act, 1863, or under section 91 or section 92 of the Code of Civil Procedure, 1908," shall be added between the words 'mentioned' and 'shall'.

5. In section 7 (ii) of the principal Act, after the words 'shall be deemed to be' the words 'in suits for maintenance, the amount claimed to be payable for one year and in other suits' shall be added.

6. The following shall be added after the words 'Memorandum of appeal' in section 7, paragraph iv, of the principal Act :—

'Provided that in suits coming under sub-clause (c) in cases where the relief sought is with reference to any immoveable property, such valuation shall not be less than half the value of the immoveable property calculated in the manner provided for by paragraph (v) of this section.'

7. In section 7 of the principal Act between paragraphs iv and v the following paragraph shall be added as iv-A :—

‘In a suit for cancellation of a decree for money or other property having a money value, or other document securing money or other property having such value,

according to the value of the subject-matter of the suit, and such value shall be deemed to be—

if the whole decree or other document is sought to be cancelled, the amount or the value of the property for which the decree was passed or the other document executed,

if a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property.’

8. In section 7 (v) of the principal Act—

in (a) for the word ‘ten’ the word ‘twenty’ shall be substituted ;

in (b) for the word ‘five’ the word ‘ten’ shall be substituted ;

and after clause (d) the following proviso shall be substituted for the existing proviso :—

‘Provided that if rules are framed under section 3 of the Suits Valuation Act, 1887, for determining the value of land for the purposes of jurisdiction, the value so determined shall be deemed to be the value of the land for the purposes of this paragraph ;

9. For the second paragraph of section 11 of the principal Act the following paragraphs shall be substituted :—

‘Where a decree directs an inquiry as to mesne profits which have accrued on the property during a period prior to the institution of the suit, if the profits ascertained on such enquiry exceed the profits claimed, no final decree shall be passed till the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, the claim for the excess shall be dismissed, unless the Court, for sufficient cause, extends the time for payment.

‘Where a decree directs an inquiry as to mesne profits from the institution of the suit, and a final decree is passed in accordance with the result of such inquiry, the decree shall not be executed until such fee is paid as would have been payable on the amount claimed in execution if a separate suit had been instituted therefor.’

10. In section 18 of the principal Act, for the words ‘eight annas’ the words ‘one rupee’ shall be substituted.

11. For Schedules I and II of the principal Act, the following schedules shall be substituted :—

## SCHEDULE I.

*Ad valorem fees.*

Number.		Proper Fee.
1. * <i>Plaint, or written statement pleading a set-off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) presented to any Civil or Revenue Court except those mentioned in section 3.</i>	When the amount or value of the subject-matter in dispute does not exceed five rupees	Eight annas.
	When such amount or value exceeds five rupees, for every five rupees, or part thereof, in excess of five rupees, up to one hundred rupees.	Nine annas.
	When such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees, up to one thousand rupees.	One rupee two annas.
	When such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to five thousand rupees.	Seven rupees eight annas.
	When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees.	Fifteen rupees.
	When such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees.	Twenty-two rupees eight annas.
	When such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof,	Thirty rupees.

\* To ascertain the proper fee leviable on the institution of a suit, see the e annexed to this schedule.

SCHEDULE I—*contd.**Ad valorem fees—contd.*

Number,		Proper Fee.
	in excess of twenty thousand rupees, up to thirty thousand rupees.	
	When such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees.	Thirty rupees.
	When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees	Thirty rupees.
	When the amount or value of the subject-matter in dispute does not exceed five rupees.	Six annas.
2. * Plaintiff, or written statement pleading a set-off or counter claim, presented to a Court outside the Presidency Town in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter does not exceed Rs 500.	When such amount or value exceeds five rupees, for every five rupees or part thereof in excess of five rupees up to one hundred rupees.	Six annas.
	When such amount or value exceeds one hundred rupees, for every ten rupees or part thereof in excess of one hundred rupees up to five hundred rupees.	Twelve annas.
3. Plaintiff in a suit for possession under [the Specific Relief Act, 1877, section 9].	...	An amount of one-half the scale of fee prescribed in article 1 above.
4. Application for review of judgment, if presented on or after the ninetieth day from the date of the decree.	...	The fee leviable on the plaintiff of memorandum of appeal.

\* To ascertain the proper fee leviable on the institution of a suit, see the table annexed to this schedule.

SCHEDULE 1—*contd.**Ad valorem fees—contd.*

Number.		Proper Fee,
5. Application for review of judgment, if presented before the ninetieth day from the date of the decree.	...	One half of the fee leviable on the plaint or memorandum of appeal.
6. Copy or translation of a judgment or order not being or having the force of a decree.	<p>When such judgment or order is passed by any Civil Court other than a High Court, or by the presiding officer of any Revenue Court or office, or by any other Judicial or Executive Authority—</p> <p>(a) If the amount or value of the subject-matter is fifty or less than fifty rupees.</p> <p>(b) If such amount or value exceeds fifty rupees.</p>	<p>Six annas.</p> <p>Twelve annas.</p>
6-A. Copy or translation of a judgment or order of a Criminal Court.	<p>When such judgment or order is passed by a High Court,</p> <p>...</p>	<p>One rupee eight annas.</p> <p>Eight annas.</p>
7. Copy of a decree or order having the force of a decree.	<p>When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court—</p> <p>(a) If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees.</p> <p>(b) If such amount or value exceeds fifty rupees.</p> <p>When such decree or order is made by a High Court.</p>	<p>Eight annas.</p> <p>One rupee.</p> <p>Four rupees.</p>

SCHEDULE I—*contd.**Ad valorem fees—contd.*

Number.		Proper Fee.
8. Copy of any document liable to stamp-duty under the Indian Stamp Act 1899, when left by any party to a suit or proceeding in place of the original withdrawn.	(a) When the stamp-duty chargeable on the original does not exceed eight annas.  (b) In any other case ...	The amount of the duty chargeable on the original.  Eight annas.
9. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report or the like, taken out of any Civil or Criminal or Revenue Court or Office, or from the office of any chief officer charged with the executive administration of a division.	For every three hundred and sixty words or fraction of three hundred and sixty words.	Eight annas.
10. <i>(Repealed by the Guardians and Wards Act, 1890 (VIII of 1890).]</i>		
11. Probate of a will or letters of administration with or without will annexed.	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees, but does not exceed five thousand rupees.  where such amount or value exceeds five thousand rupees.  Provided that when after the grant of a certificate under the Succession Certificate Act, 1889, or under the Regulation of the Bombay Code, No. VIII of 1827, in respect of any property included in an estate, a grant	Two per centum on such amount or value,  Three per centum on such amount or value.

SCHEDULE I—*contd.**Ad valorem fees—contd.*

Number.		Proper Fee.
12. Certificate under the Succession Certificate Act, 1889.	<p>of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.</p> <p>When the amount or value of any debt or security specified in the certificate under section 8 of the Act does not exceed five thousand rupees.</p> <p>When such amount or value exceeds five thousand rupees.</p>	<p>Two per centum on such amount or value, and three per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act,</p> <p>Three per centum on such amount or value, and four and a half per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act.</p>

NOTE.—(1) The amount of a debt is its amount, including interest, on the day on which the inclusion of the debt in the certificate is applied for so far as such amount can be ascertained.

(2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act; and where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security, or for both purposes, the value of the security is its market value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.



SCHEDULE I—*contd.*TABLE OF RATES OF *ad valorem* FEES LEVIABLE.

(a) On plaint, etc., mentioned in article 1 of this schedule.

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
...	5	0 8	250	260	29 3
5	10	1 1	260	270	30 5
10	15	1 10	270	280	31 7
15	20	2 3	280	290	32 9
20	25	2 12	290	300	33 11
25	30	3 5	300	310	34 13
30	35	3 14	310	320	35 15
35	40	4 7	320	330	37 1
40	45	5 0	330	340	38 3
45	50	5 9	340	350	39 5
50	55	6 2	350	360	40 7
55	60	6 11	360	370	41 9
60	65	7 4	370	380	42 11
65	70	7 13	380	390	43 13
70	75	8 6	390	400	44 15
75	80	8 15	400	410	46 1
80	85	9 8	410	420	47 3
85	90	10 1	420	430	48 5
90	95	10 10	430	440	49 7
95	100	11 3	440	450	50 9
100	110	12 5	450	460	51 11
110	120	13 7	460	470	52 13
120	130	14 9	470	480	53 15
130	140	15 11	480	490	55 1
140	150	16 13	490	500	56 3
150	160	17 15	500	510	57 5
160	170	19 1	510	520	58 7
170	180	20 3	520	530	59 9
180	190	21 5	530	540	60 11
190	200	22 7	540	550	61 13
200	210	23 9	550	560	62 15
210	220	24 11	560	570	64 1
220	230	25 13	570	580	65 3
230	240	26 15	580	590	65 5
240	250	28 1	590	600	67 7

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
600	610	68 9	990	1,000	112 7
610	620	69 11	1,000	1,100	119 15
620	630	70 13	1,100	1,200	127 7
630	640	71 15	1,200	1,300	134 15
640	650	73 1	1,300	1,400	142 7
650	660	74 3	1,400	1,500	149 15
660	670	75 5	1,500	1,600	157 7
670	680	76 7	1,600	1,700	164 15
680	690	77 9	1,700	1,800	172 7
690	700	78 11	1,800	1,900	179 15
700	710	79 13	1,900	2,000	187 7
710	720	80 15	2,000	2,100	194 15
720	730	82 1	2,100	2,200	202 7
730	740	83 3	2,200	2,300	209 15
740	750	84 5	2,300	2,400	217 7
750	760	85 7	2,400	2,500	224 15
760	770	86 9	2,500	2,600	232 7
770	780	87 11	2,600	2,700	239 15
780	790	88 13	2,700	2,800	247 7
790	800	89 15	2,800	2,900	254 15
800	810	91 1	2,900	3,000	262 7
810	820	92 3	3,000	3,100	269 15
820	830	93 5	3,100	3,200	277 7
830	840	94 7	3,200	3,300	284 15
840	850	95 9	3,300	3,400	292 7
850	860	96 11	3,400	3,500	299 15
860	870	97 13	3,500	3,600	307 7
870	880	98 15	3,600	3,700	314 15
880	890	100 1	3,700	3,800	322 7
890	900	101 3	3,800	3,900	329 15
900	910	102 5	3,900	4,000	337 7
910	920	103 7	4,000	4,100	344 15
920	930	104 9	4,100	4,200	352 7
930	940	105 11	4,200	4,300	359 15
940	950	106 13	4,300	4,400	367 7
950	960	107 15	4,400	4,500	374 15
960	970	109 1	4,500	4,600	382 7
970	980	110 3	4,600	4,700	389 15
980	990	111 5	4,700	4,800	397 7

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
4,800	4,900	404 15	14,500	15,000	937 7
4,900	5,000	412 7	15,000	15,500	959 15
5,000	5,250	427 7	15,500	16,000	982 7
5,250	5,500	442 7	16,000	16,500	1,004 15
5,500	5,750	457 7	16,500	17,000	1,027 7
5,750	6,000	472 7	17,000	17,500	1,049 15
6,000	6,250	487 7	17,500	18,000	1,072 7
6,250	6,500	502 7	18,000	18,500	1,094 15
6,500	6,750	517 7	18,500	19,000	1,117 7
6,750	7,000	532 7	19,000	19,500	1,139 15
7,000	7,250	547 7	19,500	20,000	1,162 7
7,250	7,500	562 7	20,000	21,000	1,192 7
7,500	7,750	577 7	21,000	22,000	1,222 7
7,750	8,000	592 7	22,000	23,000	1,252 7
8,000	8,250	607 7	23,000	24,000	1,282 7
8,250	8,500	622 7	24,000	25,000	1,312 7
8,500	8,750	637 7	25,000	26,000	1,342 7
8,750	9,000	652 7	26,000	27,000	1,372 7
9,000	9,250	667 7	27,000	28,000	1,402 7
9,250	9,500	682 7	28,000	29,000	1,432 7
9,500	9,750	697 7	29,000	30,000	1,462 7
9,750	10,000	712 7	30,000	32,000	1,492 7
10,000	10,500	734 15	32,000	34,000	1,522 7
10,500	11,000	757 7	34,000	36,000	1,552 7
11,000	11,500	779 15	36,000	38,000	1,582 7
11,500	12,000	802 7	38,000	40,000	1,612 7
12,000	12,500	824 15	40,000	42,000	1,642 7
12,500	13,000	847 7	42,000	44,000	1,672 7
13,000	13,500	869 15	44,000	46,000	1,702 7
13,500	14,000	892 7	46,000	48,000	1,732 7
14,000	14,500	914 15	48,000	50,000	1,762 7

When the amount or value of the subject-matter exceeds Rs. 50,000, for every five thousand rupees or part thereof in excess of fifty thousand rupees—thirty rupees.

SCHEDULE I—*contd.*TABLE OF RATES OF *ad valorem* FEES LEVIABLE—*contd.*

(b) On plaints, etc., mentioned in article 2 of this schedule.

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
...	5	0 6	200	210	15 12
5	10	0 12	210	220	16 8
10	15	1 2	220	230	17 4
15	20	1 8	230	240	18 0
20	25	1 14	240	250	18 12
25	30	2 4	250	260	19 8
30	35	2 10	260	270	20 4
35	40	3 0	270	280	21 0
40	45	3 6	280	290	21 12
45	50	3 12	290	300	22 8
50	55	4 2	300	310	23 4
55	60	4 8	310	320	24 0
60	65	4 14	320	330	24 12
65	70	5 4	330	340	25 8
70	75	5 10	340	350	26 4
75	80	6 0	350	360	27 0
80	85	6 6	360	370	27 12
85	90	6 12	370	380	28 8
90	95	7 2	380	390	29 4
95	100	7 8	390	400	30 0
100	110	8 4	400	410	30 12
110	120	9 0	410	420	31 8
120	130	9 12	420	430	32 4
130	140	10 8	430	440	33 0
140	150	11 4	440	450	33 12
150	160	12 0	450	460	34 8
160	170	12 12	460	470	35 4
170	180	13 8	470	480	36 0
180	190	14 4	480	490	36 12
190	200	15 0	490	500	37 8

## SCHEDULE II.

*Fixed fees.*

Number.		Proper Fee.
1. Application or petition.	(a) When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject matter of such application relates exclusively to those dealings ;	One anna.
	or when presented to any officer of Land-revenue by any person holding temporarily-settled land under direct engagement with Government, and when the subject matter of the application or petition relates exclusively to such engagement ;	Two annas.
	or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement ;	One anna.
	or when presented to any Civil Court other than a principal Civil Court of original jurisdiction, or to any Court of Small Causes constituted under Act No. IX of 1887, or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees ;	Two annas.
	or when presented to any Civil, Criminal or Revenue Court, or to any Board or executive officer for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court, Board or officer,	

SCHEDULE II—*contd.**Fixed fees—contd.*

Number.		Proper Fee.
	<p>or of any other document on record in such Court or office.</p> <p>(b) When containing a complaint or charge of any offence other than an offence for which police officers may, under the Criminal Procedure Code, arrest without warrant, and presented to any Criminal Court;</p> <p>or when presented to a Civil, Criminal or Revenue Court, or to a Collector, or any Revenue officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act;</p> <p>or to deposit in Court revenue or rent;</p> <p>or for determination by a Court of the amount of compensation to be paid by landlord to his tenant.</p> <p>(a) When presented to a Chief Commissioner or other Chief Controlling Revenue or Executive authority, or to a Commissioner of Revenue or Circuit, or to any chief officer charged with the executive administration of a division and not otherwise provided for by the Act.</p> <p>(d) (i) when presented to a High Court under section 115 of the Code of Civil Procedure, 1908, for revision of an order</p> <p>(a) when the value of the suit or proceeding to</p>	<p>In the case of a criminal complaint one rupee and in other cases twelve annas.</p> <p>Eight annas.</p> <p>One rupee eight annas.</p> <p>Five rupees.</p>

SCHEDULE II—*contd.**Fixed fees—Contd.*

Number.		Proper fee.
	which the order relates does not exceed thousand rupees.	
	(b) When the value of the suit or proceeding exceeds thousand rupees.	Ten rupees,
	(ii) When presented to a High Court otherwise than under that section.	Two rupees.
A. Application to any Civil Court that records may be called for from another Court.	When the Court grants the application and is of opinion that the transmission of such records involves the use of the post.	Twelve annas in addition to any fee levied on the application under clause (a), clause (b) or clause (d) of article 1 of this schedule.
B. Application for leave to sue as a pauper.	...	Eight annas.
C. Application for leave to appeal as a pauper.	(a) When presented to a District Court or a Sub-Court.	One rupee.
	(b) When presented to a Commissioner or a High Court.	Two rupees,
D. Omitted.		
E. Complaint or memorandum of appeal in a suit to establish or disprove a right of occupancy.		
F. Bail-bond or other instrument of obligation given in pursuance of an order made by a Court, or Magistrate under any section of the Code of Criminal Procedure, 1898, or the Code of Civil Procedure, 1908, and not otherwise provided for in this Act.	...	Eight annas.





SCHEDULE II—*contd.**Fixed fees—contd.*

Number.		Proper Fee
Procedure, 1908, and is presented.	(b) to a High Court or Chief Commissioner, or other Chief Controlling Executive or Revenue Authority.	Two rupees.
2. Caveat ...	...	Ten rupees.
3. <i>Omitted.</i>		
4. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866.	...	Five rupees.
5. [ <i>Rep. by Act V of 1908.</i> ]		
6. [ <i>Rep. by Act VI of 1889, s. 18 (1).</i> ]		
7. Plaint or memorandum of appeal in a suit—		
) to alter or set aside a summary decision or order of any of the civil courts not established by Letters Patent or of any Revenue Court.	...	Fifteen rupees.
i) to alter or cancel any entry in a register of the names of proprietors of revenue paying estates;		
i) for relief under section 14 of the Religious Endowments Act, 1863, or under section 91 or section 92 of the Code of Civil Procedure, 1908,	...	Fifty rupees.

SCHEDULE II—*contd.**Fixed fees—contd.*

Number.		Proper Fee.
17-A. <i>Plaint or memorandum of appeal in a suit—</i>		
(i) to obtain a declaratory decree where no consequential relief is prayed;	When the plaint is presented to or the memorandum of appeal is against the decree of—	
(ii) to set aside an award;	a District Munsif's Court or the City Civil Court.	Fifteen rupees.
(iii) to obtain a declaration that an alleged adoption is invalid or never in fact took place or to obtain a declaration that an adoption is valid.	a District Court of a Sub-Court.	Hundred rupees if the value for purposes of jurisdiction is less than ten thousand rupees; five hundred rupees if such value is ten thousand rupees or upwards.
17-B. <i>Plaint or memorandum of appeal in every suit where it is not possible to estimate at a money value the subject-matter in dispute and which is not otherwise provided for by this Act.</i>	When the plaint is presented to or the memorandum of appeal is against the decree of—	
	a Revenue Court	Ten rupees,
	a District Munsif's Court or the City Civil Court.	Fifteen rupees,
	a District Court or a Sub-Court.	One hundred rupees.
18. <i>Applications under section 17 or section 20 of the second schedule of the Code of Civil Procedure, 1908.</i>	When presented to a District Munsif's Court or the City Civil Court.	Fifteen rupees.
19. <i>Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908.</i>	When presented to a District Court or a Sub-Court	One hundred rupees.

SCHEDULE II—*contd.**Fixed fees—contd.*

Number.		Proper Fee.
20. Every petition under the Indian Divorce Act, 186, except petitions under section 44 of the same Act, and every memorandum of appeal under section 55 of the same Act.		Twenty rupees,
21. Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1895.		

## PUNJAB ACT VII OF 1922.

## THE COURT-FEES (PUNJAB AMENDMENT) ACT, 1922.

AS AMENDED BY PUNJAB ACTS, I AND VI OF 1926.

*An Act to amend the Court-fees Act, 1870, with reference to the scale of court-fees in the Punjab.*

Whereas it is necessary to revise the scale of court-fees provided in the Court-Fees Act, 1870, in its application to the Punjab in the manner hereinafter appearing,

It is hereby enacted as follows :—

1. (1) This Act may be called the Court-fees (Punjab Amendment) Act, 1922.

(2) It extends to the Punjab.

(3) It shall come into force on such date as the Local Government may by notification appoint in this behalf.

2. (1) The Court-fees Act, 1870, shall be amended in its application to the Punjab in the manner hereinafter provided.

(2) The sections and schedules hereinafter referred to by number mean the sections and schedules respectively so numbered in the Court-fees Act, 1870, unless it shall appear to the contrary.

3. In section 4 the word "one" shall be substituted for the word "two" between the word "of" and the word "or".

4. In section 18 between the word "of" and the word "unless" for the word "eight annas" the words "one rupee" shall be substituted.

5. For Article 1 of Schedule I the following Article shall be substituted, namely :—

Number.		Proper Fee.
1. Plaint, written statement pleading a set-off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) or of cross objection presented to any Civil or Revenue court except those mentioned in section 3.	When the amount or value of the subject-matter in dispute does not exceed five rupees.	Six annas.
	When such amount or value exceeds five rupees, but does not exceed one hundred rupees, for every five rupees or part thereof in excess of five rupees up to one hundred rupees.	Six annas.
	When such amount or value exceeds one hundred rupees, but does not exceed five hundred rupees, for every ten rupees or part thereof in excess of one hundred rupees up to five hundred rupees.	Twelve annas.
	When such amount or value exceeds five hundred rupees, for every ten rupees or part thereof up to one thousand rupees.	One rupee two annas.
	When such amount or value exceeds one thousand rupees, for every one hundred rupees or part thereof in excess of one thousand rupees up to five thousand rupees.	Seven rupees eight annas.
	When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees or part thereof in excess of five thousand rupees, up to ten thousand rupees.	Fifteen rupees.
	When such amount or value exceeds ten thousand rupees, for every five hundred rupees or part thereof in excess of ten thousand rupees, up to twenty thousand rupees.	Twenty-two rupees eight annas.
	When such amount or value exceeds twenty thousand rupees, for every one thousand rupees or part thereof	Thirty rupees.

Number.		Proper Fee.
1. Complaint etc.—concluded.	in excess of twenty thousand rupees up to thirty thousand rupees.	
	When such amount or value exceeds thirty thousand rupees, for every thousand rupees or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees.	Thirty rupees.
	When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees.	Thirty rupees.

(2) The proviso, as to maximum, after the ninth entry in the second column of the said article in the same schedule shall be omitted.

6. Article 13 of schedule I which was repealed by the Punjab Courts (Amendment) Act, 1912, in so far as it affected the Punjab is hereby re-enacted, save that for the words "Chief Court in the Punjab," the words "High Court of Judicature at Lahore," for the figures "70" the figures "44" and for the figures "1884" the figure "1918" shall be substituted; and the words and figures "as amended by the Punjab Courts Act, 1897" shall be omitted.

7. For the table of rates of *ad valorem* fees leviable on the institution of suits set forth at the end of schedule I, the table set forth in the schedule to this Act shall be substituted.

8. In article 1 of schedule II—

(1) for the words "one anna" in the third column opposite clause a) in the second column, the words "two annas" shall be substituted;

(2) for the words "eight annas" in the third column opposite (b) in the second column, the words "one rupee" shall be substituted;

(3) for clause (d), in the second column and the corresponding entry in the third column shall be substituted the following clause and entries, namely:—

(d) When presented to the High Court.

- |   |                     |
|---|---------------------|
| (i) Under the Indian Companies Act, 1913, for winding up a Company. | One hundred rupees. |
| (ii) Under the same Act for taking same other judicial action.      | Five rupees.        |
| (iii) In all other cases ...  | Two rupees.         |

9. In the third column of articles 4, 5 and 7 respectively of Schedule II—

for the words "eight annas" the words "one rupee" shall be substituted.

10. In the third column of article 10 of schedule II—

for the words "eight annas" opposite clause (a) in the second column, the words "one rupee" shall be substituted.

11. In the third column of article 11 of schedule II—

(1) for the words "eight annas" opposite clause (a) in the second column, the words "one rupee" shall be substituted :

(2) for the words "two rupees" opposite clause (b) in the second column, the words "four rupees" shall be substituted.

12. The following new article with the corresponding entry in the third column shall be added to the first column of schedule II, namely :—

- |   |                |
|---|----------------|
| 22. Plaint or memorandum of appeal in a suit by a reversioner under the Punjab Customary Law for a declaration in respect of an alienation of ancestral land. | Twenty rupees, |
|---|----------------|

[The term "ancestral land" has been explained to mean land held by the common ancestor. Vide *Musst. Jinton v. Ahmad and another*, 106 I. C. 817 = 1925 Lah. 221.]

## SCHEDULE.

*Table of rates of ad valorem fees leviable on the institution of suits.*  
(See Section 7.)

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
...	5	0 9	260	270	30 6
5	10	1 2	270	280	31 8
10	15	1 11	280	290	32 10
15	20	2 4	290	300	33 14
20	25	2 13	300	310	34 14
25	30	3 6	310	320	36 0
30	35	3 15	320	330	37 2
35	40	4 8	330	340	38 4
40	45	5 1	340	350	39 6
45	50	5 10	350	360	40 8
50	55	6 3	360	370	41 10
55	60	6 12	370	380	42 12
60	65	7 5	380	390	43 14
65	70	7 14	390	400	45 0
70	75	8 7	400	410	46 2
75	80	9 0	410	420	47 4
80	85	9 9	420	430	48 6
85	90	10 2	430	440	49 8
90	95	10 11	440	450	50 10
95	100	11 4	450	460	51 12
100	110	12 6	460	470	52 14
110	120	13 8	470	480	54 0
120	130	14 10	480	490	55 2
130	140	15 12	490	500	56 4
140	150	16 14	500	510	57 6
150	160	18 0	510	520	58 8
160	170	19 2	520	530	59 10
170	180	20 4	530	540	60 12
180	190	21 6	540	550	61 14
190	200	22 8	550	560	63 0
200	210	23 10	560	570	64 2
210	220	24 12	570	580	65 4
220	230	25 14	580	590	66 6
230	240	27 0	590	600	67 8
240	250	28 2	600	610	68 10
250	260	29 4	610	620	69 12

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
620	630	70 14	1,100	1,200	127 8
630	640	72 0	1,200	1,300	135 0
640	650	73 2	1,300	1,400	142 8
650	660	74 4	1,400	1,500	150 0
660	670	75 6	1,500	1,600	157 8
670	680	76 8	1,600	1,700	165 0
680	690	77 10	1,700	1,800	172 8
690	700	78 12	1,800	1,900	180 0
700	710	79 14	1,900	2,000	187 8
710	720	81 0	2,000	2,100	195 0
720	730	82 2	2,100	2,200	202 8
730	740	83 4	2,200	2,300	210 0
740	750	84 6	2,300	2,400	217 8
750	760	85 8	2,400	2,500	225 0
760	770	86 10	2,500	2,600	232 8
770	780	87 12	2,600	2,700	240 0
780	790	88 14	2,700	2,800	247 8
790	800	90 0	2,800	2,900	255 0
800	810	91 2	2,900	3,000	262 8
810	820	92 4	3,000	3,100	270 0
820	830	93 6	3,100	3,200	277 8
830	840	94 8	3,200	3,300	285 0
840	850	95 10	3,300	3,400	292 8
850	860	96 12	3,400	3,500	300 0
860	870	97 14	3,500	3,600	307 8
870	880	99 2	3,600	3,700	315 0
880	890	100 2	3,700	3,800	322 8
890	900	101 4	3,800	3,900	330 0
900	910	102 6	3,900	4,000	337 8
910	920	103 8	4,000	4,100	345 0
920	930	104 10	4,100	4,200	352 8
930	940	105 12	4,200	4,300	360 0
940	950	106 14	4,300	4,400	367 8
950	960	108 0	4,400	4,500	375 0
960	970	109 2	4,500	4,600	382 8
970	980	110 4	4,600	4,700	390 0
980	990	111 6	4,700	4,800	397 8
990	1,000	112 8	4,800	4,900	405 0
1,000	1,100	120 0	4,900	5,000	412 8



When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.		When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee	
Rs.	Rs.	Rs.	A.	Rs.	Rs.	Rs.	A.
5,000	5,250	427	0	19,500	20,000	1,162	8
5,250	5,500	442	8	20,000	21,000	1,192	8
5,500	5,750	457	8	21,000	22,000	1,222	8
5,750	6,000	472	8	22,000	23,000	1,252	8
6,000	6,250	487	8	23,000	24,000	1,282	8
6,250	6,500	502	8	24,000	25,000	1,312	8
6,500	6,750	517	8	25,000	26,000	1,342	8
6,750	7,000	532	8	26,000	27,000	1,372	8
7,000	7,250	547	8	27,000	28,000	1,402	8
7,250	7,500	562	8	28,000	29,000	1,432	8
7,500	7,750	577	8	29,000	30,000	1,462	8
7,750	8,000	592	8	30,000	32,000	1,492	8
8,000	8,250	607	8	32,000	34,000	1,522	8
8,250	8,500	622	8	34,000	36,000	1,552	8
8,500	8,750	637	8	36,000	38,000	1,582	8
8,750	9,000	652	8	38,000	40,000	1,612	8
9,000	9,250	667	8	40,000	42,000	1,642	8
9,250	9,500	682	8	42,000	44,000	1,672	8
9,500	9,750	697	8	44,000	46,000	1,702	8
9,750	10,000	712	8	46,000	48,000	1,732	8
10,000	10,500	735	0	48,000	50,000	1,762	8
10,500	11,000	757	8	50,000	55,000	1,792	8
11,000	11,500	780	0	55,000	60,000	1,822	8
11,500	12,000	802	8	60,000	65,000	1,852	8
12,000	12,500	825	0	65,000	70,000	1,882	8
12,500	13,000	847	8	70,000	75,000	1,912	8
13,000	13,500	870	0	75,000	80,000	1,942	8
13,500	14,000	892	8	80,000	85,000	1,972	8
14,000	14,500	915	0	85,000	90,000	2,002	8
14,500	15,000	937	8	90,000	95,000	2,032	8
15,000	15,500	960	0	95,000	1,00,000	2,062	8
15,500	16,000	982	8	1,00,000	1,05,000	2,092	8
16,000	16,500	1,005	0	1,05,000	1,10,000	2,122	8
16,500	17,000	1,027	8	1,10,000	1,15,000	2,152	8
17,000	17,500	1,050	0	1,15,000	1,20,000	2,182	8
17,500	18,000	1,072	8	1,20,000	1,25,000	2,212	8
18,000	18,500	1,095	0	1,25,000	1,30,000	2,242	8
18,500	19,000	1,117	8	1,30,000	1,35,000	2,272	8
19,000	19,500	1,140	0	1,35,000	1,40,000	2,302	8

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
1,40,000	1,45,000	2,332 8	2,70,000	2,75,000	3,112 8
1,45,000	1,50,000	2,362 8	2,75,000	2,80,000	3,142 8
1,50,000	1,55,000	2,392 8	2,80,000	2,85,000	3,172 8
1,55,000	1,60,000	2,422 8	2,85,000	2,90,000	3,202 8
1,60,000	1,65,000	2,452 8	2,90,000	2,95,000	3,232 8
1,65,000	1,70,000	2,482 8	2,95,000	3,00,000	3,262 8
1,70,000	1,75,000	2,512 8	3,00,000	3,05,000	3,292 8
1,75,000	1,80,000	2,542 8	3,05,000	3,10,000	3,322 8
1,80,000	1,85,000	2,572 8	3,10,000	3,15,000	3,352 8
1,85,000	1,90,000	2,602 8	3,15,000	3,20,000	3,382 8
1,90,000	1,95,000	2,632 8	3,20,000	3,25,000	3,412 8
1,95,000	2,00,000	2,662 8	3,25,000	3,30,000	3,442 8
2,00,000	2,05,000	2,692 8	3,30,000	3,35,000	3,472 8
2,05,000	2,10,000	2,722 8	3,35,000	3,40,000	3,502 8
2,10,000	2,15,000	2,752 8	3,40,000	3,45,000	3,532 8
2,15,000	2,20,000	2,782 8	3,45,000	3,50,000	3,562 8
2,20,000	2,25,000	2,812 8	3,50,000	3,55,000	3,592 8
2,25,000	2,30,000	2,842 8	3,55,000	3,60,000	3,622 8
2,30,000	2,35,000	2,872 8	3,60,000	3,65,000	3,652 8
2,35,000	2,40,000	2,902 8	3,65,000	3,70,000	3,682 8
2,40,000	2,45,000	2,932 8	3,70,000	3,75,000	3,712 8
2,45,000	2,50,000	2,962 8	3,75,000	3,80,000	3,742 8
2,50,000	2,55,000	2,992 8	3,80,000	3,85,000	3,772 8
2,55,000	2,60,000	3,022 8	3,85,000	3,90,000	3,802 8
2,60,000	2,65,000	3,052 8	3,90,000	3,95,000	3,832 8
2,65,000	2,70,000	3,082 8	3,95,000	4,00,000	3,862 8

And when the amount or value of the subject-matter exceeds Rs. 4,00,000 the proper fee leviable shall be Rs. 3,862 annas 8 plus Rs. 30 for each five thousand rupees or part thereof in excess of Rs. 4,00,000.

## UNITED PROVINCES ACT III OF 1932.

### UNITED PROVINCES COURT-FEES AMENDMENT ACT 1932.

[PASSED BY THE LOCAL LEGISLATURE OF THE UNITED  
PROVINCES OF AGRA AND OUDH.]

*Received the assent of the Governor of the United Provinces of Agra and Oudh on 14th April, 1932 and of the Governor-General on 25th April 1932.*

*An Act further to amend the Court-fees Act, 1870 (VII of 1870) in its application to the United Provinces.*

WHEREAS it is expedient further to amend the Court-fees  
Preamble. Act, 1870, in its application to the United  
Provinces,

AND WHEREAS the previous sanction of the Governor-General has been obtained, under section 80-A, sub-section (3), of the Government of India Act (5 and 6 Geo. V, c. 61 ; 6 and 7 Geo. V, c. 37 ; 9 and 10 Geo. V, c. 101), to the passing of this Act ;

It is hereby enacted as follows :—

Title, extent and com- 1. This Act may be called the United Pro-  
mencement. vinces Court-fees (Amendment) Act, 1932.

(2) It extends to the territories for the time being administered by the Local Government of the United Provinces.

(3) It shall come into force on the first day of May, 1932, and shall remain in force up till June 30, 1936 \*

Amendment of section 6 of Act VII of 1870. 2. To section 6 of the Court-fees Act, 1870, hereinafter referred to as "the said Act", the following proviso shall be added, namely :—

"Provided that where such document relates to any suit, appeal or other proceeding under the Oudh Rent Act, 1886, the Agra Tenancy Act, 1926, or the United Provinces Land Revenue Act, 1901, the proper fee shall be three-quarters of the fee indicated in

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\* The word and figures June 30, 1936 have been substituted for the word and figures March, 1934 by Act XI of 1934.

either of the said schedules except where the document is of any of the kinds specified as chargeable in the first schedule and the amount or value of the subject matter of the suit, appeal or proceeding to which it relates exceeds the value of Rs. 500:

Provided further that the fee payable in respect of any such document as is mentioned in the foregoing proviso shall not be less than that indicated by either of the said schedules before the commencement of this Act."

Amendment of paragraph (v) of section 7 of Act VII of 1870.

3. In paragraph (v) of section 7 of the said Act the word "ten" in clause (a) shall be read as "twenty" and the word "five" in clause (b) shall be read as "six".

Amendment of paragraph (ix) of section 7 of Act VII of 1870.

4. For paragraph (ix) of section 7 of the said Act the following clauses shall be substituted, namely,—

(ix) In suits against a mortgagee for the recovery of the property mortgaged according to the principal money expressed to be secured by the instrument of mortgage.

(ix-A) In suits by a mortgagee to foreclose the mortgage, or where the mortgage is made by conditional sale, to have the sale declared absolute, according to the total amount claimed by way of principal and interest."

Amendment of section 18 of Act VII of 1870.

5. In section 18 of the said Act for the words "eight annas" the words "twelve annas" shall be substituted.

Amendment of Schedule I to Act VII of 1870.

6. In Schedule I to the said Act the following amendments shall be made, namely,—

(i) In article 1 for the entries in the second and third columns the entries shown in the first and second columns of Schedule A to this Act shall be substituted.

(ii) In article 6 for the words "four", "eight" and "one rupee", in the third column the words "six", "twelve" and "one rupee eight annas", respectively, shall be substituted.

(iii) In article 7 for the words "eight" and "one rupee" in the third column the words "twelve" and "one rupee eight annas", respectively, shall be substituted.

(iv) In article 8 for the word "eight" in the third column the word "twelve" shall be substituted.

(v) In article 11 for the entries above the proviso in the second and third columns the following shall be substituted :—

1. When the amount or value of the property in respect of which the grant of Probate or Letters is made exceeds one thousand rupees, but does not exceed ten thousand rupees ;	Two per centum on such amount or value.
--	---

and

2. When such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees ;	Two and one-half per centum on such amount or value.
---	--

and

3. When such amount or value exceeds fifty thousand rupees, but does not exceed one lakh of rupees, for the portion of such amount or value which is in excess of fifty thousand rupees ;	Three per centum on such amount or value.
---	---

and

4. When such amount or value exceeds a lakh of rupees, for the portion of such amount or value which is in excess of a lakh of rupees ;	Four per centum on such amount or value.
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(vi) In article 12 for the entries in the first and second columns and for the first paragraph in the third column the following shall be substituted :—

12. Certificate under the Indian Succession Act, 1925.	1. When the amount or value of any debt or security specified in the certificate under section 374 of the Act does not exceed twenty thousand rupees ;	Two per centum on such amount or value and three per centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act,
	and	
	2. When such amount or value exceeds twenty thousand rupees, but does not exceed fifty thousand rupees, for the portion of such amount or value which is in excess of twenty thousand rupees ;	Two and half per centum on such amount or value and three and three-quarters per centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act.
	and	
	3. When such amount or value exceeds fifty thousand rupees, but does not exceed a lakh of rupees, for the portion of such amount or value which is in excess of fifty thousand rupees ;	Three per centum on such amount or value and four and a half per centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act,
	and	
	4. When such amount or value exceeds a lakh of rupees for the portion of such amount or value which is in excess of a lakh of rupees.	Four per centum on such amount or value and six per centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act.

(vii) For the table of *ad valorem* fees leviable on the institution of suits the table shown in Schedule B to this Act shall be substituted.

Amendment of Schedule II to Act VII of 1870.

7. In Schedule II to the said Act the following amendments shall be made, namely,—

(i) In article 1 for the words "one anna", "eight annas" and "one rupee" in third column the words "two annas" "twelve annas", "one rupee and eight annas", respectively shall be substituted; and the following clauses shall be substituted for clause (d):—

(d) (i) When presented to the Board of Revenue for revision of a judgment or order. Three rupees.

(ii) When presented to a High Court—

(1) Under the Indian Companies Act, 1913 (Act VII of 1913) for winding up a company; Fifty rupees.

and

(2) Under section 115 of the Code of Civil Procedure, 1908 (Act V of 1908), for revision of an order; Four rupees.

(3) In any other case Three rupees.

(ii) In article 1-A for the words "twelve annas" in the third column the words "one rupee two annas" shall be substituted.

(iii) In articles 5, 6 and 7 for the word "eight" in the third column the word "twelve" shall be substituted.

(iv) In article 10 for the words "eight annas", "one rupee" and "two rupees" in the third column, the words "twelve annas", "one rupee and eight annas" and "three rupees" respectively shall be substituted.

(v) For article 11, the following shall be substituted:—

11. Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree and is presented	(a) to any Civil Court other than a High Court or to any Revenue Court or Executive Officer other than a Commissioner of the division or Chief Controlling Revenue or Executive Authority.	Twelve annas.
	(b) to a Commissioner of the division.	Two rupees.
	(c) to a High Court or to a Chief Controlling Executive or Revenue Authority.	Three rupees.

(vi) The bracket opposite articles 12, 13 and 14 in the second column shall be omitted and for article 12 the following shall be substituted :—

12 Caveat.	Where the amount or value of the property in respect of which the caveat is lodged—  (a) does not exceed five thousand rupees ;  (b) exceeds five thousand rupees,	Five rupees.  Ten rupees.
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(vii) For article 14 the following shall be substituted, namely,—

14. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1886.	...	Seven rupees eight annas.
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(viii) In article 17 for the words "Ten rupees" in the third column, the words "Fifteen rupees" shall be substituted, and the following proviso shall be added :—

"Provided that in a suit filed before a High Court under its original jurisdiction the fee chargeable under this article shall be one hundred rupees."

(ix) In articles 18 and 19 for the word "ten" in the third column the word "fifteen" shall be substituted.

(x) In articles 20 and 22 for the word "twenty" in the third column the word "thirty" shall be substituted.



## SCHEDULE A.

When the amount or value of the subject-matter in dispute does not exceed five rupees.	Six annas.
When such amount or value exceeds five rupees, for every five rupees, or part thereof, in excess of five rupees, up to one hundred rupees.	Six annas.
When such amount or value exceeds one hundred rupees, for every ten rupees or part thereof, in excess of one hundred rupees up to two hundred rupees.	Twelve annas.
When such amount or value exceeds two hundred rupees, for every ten rupees, or part thereof, in excess of two hundred rupees up to five hundred rupees.	One rupee.
When such amount or value exceeds five hundred rupees, for every ten rupees, or part thereof, in excess of five hundred rupees, up to one thousand rupees,	One rupee four annas.
When such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to five thousand rupees.	Six rupees four annas.
When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees,	Twelve rupees eight annas.
When such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees,	Eighteen rupees twelve annas.
When such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees,	Twenty-five rupees.
When such amount or value exceeds thirty thousand rupees, for every two thousand rupees or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees,	Twenty-five rupees.
When such amount or value exceeds fifty thousand rupees, for every five thousand rupees or part thereof, in excess of fifty thousand rupees,	Thirty-one rupees four annas.
Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be four thousand five hundred rupees.	

## SCHEDULE B.

TABLE OF RATES OF *Ad valorem* FEES LEVIABLE ON THE  
INSTITUTION OF SUITS.

When the amount or value of the sub- ject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the sub- ject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
...	5	0 6	250	260	21 0
5	10	0 12	260	270	22 0
10	15	1 2	270	280	23 0
15	20	1 8	280	290	24 0
20	25	1 14	290	300	25 0
25	30	2 4	300	310	26 0
30	35	2 10	310	320	27 0
35	40	3 0	320	330	28 0
40	45	3 6	330	340	29 0
45	50	3 12	340	350	30 0
50	55	4 2	350	360	31 0
55	60	4 8	360	370	32 0
60	65	4 14	370	380	33 0
65	70	5 4	380	390	34 0
70	75	5 10	390	400	35 0
75	80	6 0	400	410	36 0
80	85	6 6	410	420	37 0
85	90	6 12	420	430	38 0
90	95	7 2	430	440	39 0
95	100	7 8	440	450	40 0
100	110	8 4	450	460	41 0
110	120	9 0	460	470	42 0
120	130	9 12	470	480	43 0
130	140	10 8	480	490	44 0
140	150	11 4	490	500	45 0
150	160	12 0	500	510	46 4
160	170	12 12	510	520	47 8
170	180	13 8	520	530	48 12
180	190	14 4	530	540	50 0
190	200	15 0	540	550	51 4
200	210	16 0	550	560	52 8
210	220	17 0	560	570	53 12
220	230	18 0	570	580	55 0
230	240	19 0	580	590	56 4
240	250	20 0	590	600	57 8

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
600	610	58 12	990	1,000	107 8
610	620	60 0	1,000	1,100	113 12
620	630	61 4	1,100	1,200	120 0
630	640	62 8	1,200	1,300	126 4
640	650	63 12	1,300	1,400	132 8
650	660	65 0	1,400	1,500	138 12
660	670	66 4	1,500	1,600	145 0
670	680	67 8	1,600	1,700	151 4
680	690	68 12	1,700	1,800	157 8
690	700	70 0	1,800	1,900	163 12
700	710	71 4	1,900	2,000	170 0
710	720	72 8	2,000	2,100	176 4
720	730	73 12	2,100	2,200	182 8
730	740	75 0	2,200	2,300	188 12
740	750	76 4	2,300	2,400	195 0
750	760	77 8	2,400	2,500	201 4
760	770	78 12	2,500	2,600	207 8
770	780	80 0	2,600	2,700	213 12
780	790	81 4	2,700	2,800	220 0
790	800	82 8	2,800	2,900	226 4
800	810	83 12	2,900	3,000	232 8
810	820	85 0	3,000	3,100	238 12
820	830	86 4	3,100	3,200	245 0
830	840	87 8	3,200	3,300	251 4
840	850	88 12	3,300	3,400	257 8
850	860	90 0	3,400	3,500	263 12
860	870	91 4	3,500	3,600	270 0
870	880	92 8	3,600	3,700	276 4
880	890	93 12	3,700	3,800	282 8
890	900	95 0	3,800	3,900	288 12
900	910	96 4	3,900	4,000	295 0
910	920	97 8	4,000	4,100	301 4
920	930	98 12	4,100	4,200	307 8
930	940	100 0	4,200	4,300	313 12
940	950	101 4	4,300	4,400	320 0
950	960	102 8	4,400	4,500	326 4
960	970	103 12	4,500	4,600	332 8
970	980	105 0	4,600	4,700	338 12
980	990	106 4	4,700	4,800	345 0

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
4,800	4,900	351 4	17,000	17,500	888 12
4,900	5,000	357 8	17,500	18,000	907 8
5,000	5,250	370 0	18,000	18,500	926 4
5,250	5,500	382 8	18,500	19,000	945 0
5,500	5,750	395 0	19,000	19,500	963 12
5,750	6,000	407 8	19,500	20,000	982 8
6,000	6,250	420 0	20,000	21,000	1,007 8
6,250	6,500	432 8	21,000	22,000	1,032 8
6,500	6,750	445 0	22,000	23,000	1,057 8
6,750	7,000	457 8	23,000	24,000	1,082 8
7,000	7,250	470 0	24,000	25,000	1,107 8
7,250	7,500	482 8	25,000	26,000	1,132 8
7,500	7,750	495 0	26,000	27,000	1,157 8
7,750	8,000	507 8	27,000	28,000	1,182 8
8,000	8,250	520 0	28,000	29,000	1,207 8
8,250	8,500	532 8	29,000	30,000	1,232 8
8,500	8,750	545 0	30,000	32,000	1,257 8
8,750	9,000	557 8	32,000	34,000	1,282 8
9,000	9,250	570 0	34,000	36,000	1,307 8
9,250	9,500	582 8	36,000	38,000	1,332 8
9,500	9,750	595 0	38,000	40,000	1,357 8
9,750	10,000	607 8	40,000	42,000	1,382 8
10,000	10,500	626 4	42,000	44,000	1,407 8
10,500	11,000	645 0	44,000	46,000	1,432 8
11,000	11,500	663 12	46,000	48,000	1,457 8
11,500	12,000	682 8	48,000	50,000	1,482 8
12,000	12,500	701 4	50,000	55,000	1,513 12
12,500	13,000	720 0	55,000	60,000	1,545 0
13,000	13,500	738 12	60,000	65,000	1,576 4
13,500	14,000	757 8	65,000	70,000	1,607 8
14,000	14,500	776 4	70,000	75,000	1,638 12
14,500	15,000	795 0	75,000	80,000	1,670 0
15,000	15,500	813 12	80,000	85,000	1,701 4
15,500	16,000	832 8	85,000	90,000	1,732 8
16,000	16,500	851 4	90,000	95,000	1,763 12
16,500	17,000	870 0	95,000	1,00,000	1,795 0
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
2,00,000	2,420	0	5,00,000	4,295	0
3,00,000	3,045	0	5,35,000	4,500	0
4,00,000	3,670	0			

## UNITED PROVINCES ACT VII OF 1933.

Whereas it is expedient to amend the Court-Fees Act, 1870 in its application to the United Provinces for the purpose herein after appearing, it is hereby enacted as follows :

1. (1) This Act may be called the United Provinces Court-fees (Amendment) Act, 1933.

(2) It extends to the territories for the time being administered by the Local Government of the United Provinces.

2. In Schedule II to the Court-Fees Act, 1870, the following Article shall be added after article 21 :

22, Election petition.	(a) A petition presented to the Commissioner of a division or to the Collector of a district (or to some other person or tribunal specially appointed by rule in this behalf) under sub-section (2) of the section 22 of the United Provinces Municipalities Act (Act II of 1916) questioning the election of any person as a member of a Municipal Board.	One hundred rupees.
	(b) A petition presented to a District Judge (or to some other person or tribunal specially appointed by rule in this behalf) or to a Munsiff under sub-section (2) of section 18 of the District Boards Act (Act X of 1922) questioning the election of any person as a member of a District Board.	One hundred rupees.

## APPENDIX II.

### REDUCTIONS AND REMISSIONS OF COURT-FEES.

#### NOTIFICATION REDUCING AND REMITTING COURT-FEES.

##### A—RULES BY THE GOVERNOR-GENERAL IN COUNCIL.

*No. 4650, dated the 10th September, 1889.*

*[Gazette of India, 1889, Part I, p. 506.]*

Under section 35 of the Court-fees Act, VII of 1870, and in supersession of all previous notifications under that section, it is hereby notified that, in exercise of the power to reduce or limit, in the whole or in any part of British India, all or any of the fees mentioned in the First and Second Schedules to the said Act, the Governor-General in Council has been pleased to make the reductions and remissions hereinafter set forth, namely :

##### *A—General for the whole of British India.*

(1) to remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use, or is no longer required for use, and on applications for renewal of stamped paper which has become spoiled or unfit for use ;

(2) to remit the fees chargeable on applications in writing, relating exclusively to the purchase of salt which is the property of the Government ;

(3) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or officer, without summoning the defendant, rejects it not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the Court is situated, together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described, and that the value of the stamp should, in his opinion, be refunded ;

(4) to remit the fees chargeable on—

(a) copies of village settlement-records furnished to land-holders and cultivators during the currency or at the termination of settlement operations ;

(b) lists of fields extracted from village settlement-records for the purpose of being filed with petitions of plaint in settlement Courts :

Provided that nothing in this clause shall apply to copies of judicial proceedings, or to copies of village settlement-records (other

than lists of fields) extracted as aforesaid, which may be filed in any Court or office;

<sup>1</sup> (5) to declare that the fee chargeable on a plaint filed in a suit for possession of immoveable property under section 9 of the <sup>2</sup> Specific Relief Act, I of 1877, shall be one-half of the amount prescribed in the scale of fees for plaints mentioned in article 1 of the First Schedule.

<sup>3</sup> (6) to direct that the fee chargeable on appeals from orders under clause (c) of section 244 of the <sup>4</sup> Code of Civil Procedure (Act XIV of 1882) shall be limited to the amounts chargeable under article 11 of the Second Schedule;

(7) to remit the fees chargeable on security-bonds for the keeping of the peace by, or good behaviour of, persons other than the executants;

(8) to remit the fee payable under article 1, clause (c), of the Second Schedule on an application or petition presented to a Chief Commissioner, when the application or petition is accompanied by a petition to the Government of India and contains merely a request that that petition may be forwarded to the Government of India;

(9) to remit the fees chargeable under articles 6, 7 and 9 of the First Schedule on copies furnished by Civil or Criminal Courts or Revenue Courts or Offices for the private use of persons applying for them:

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of justice or received by any public officer;

(10) to remit the fees chargeable, under paragraph 4 of clause (a) and paragraph 2 of clause (b) of article 1 of the Second Schedule, on applications for orders for the payment of deposits in cases in which the deposit does not exceed Rs. 25 in amount:

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application;

(11) to remit, with reference to clause (xi) of section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently, when made by persons who do not at the time of application hold the land;

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<sup>1</sup> Clause (5) is superseded by the amendment made in article 2 of Schedule I of the Court-fees Act, 1870, by the Repealing and Amending Act, 1891 (12 of 1891), Sch. II.

<sup>2</sup> Genl. Acts, Vol. II.

<sup>3</sup> Clause 6, as it now stands, forms the subject of a separate notification, and is inserted here in this form for convenience of reference. See Notification No. 4344 S R., dated 6th October, 1893, Gazette of India, 1893, Pt. I, p. 575.

<sup>4</sup> See now Act 5 of 1908, Genl. Acts, Vol. VI.

(12) to remit the fees chargeable on applications for loans under the <sup>1</sup>Land Improvement Loans Act, XIX of 1883, or <sup>1</sup>the Agriculturists' Loans Act, XII of 1884;

(13) to remit the fee chargeable on an application made by a person to the Collector under the second paragraph of section 39 of the <sup>2</sup>Indian Stamp Act, I of 1879, for the return to that person, or to the Registration-officer who impounded it, of a document impounded and sent to the Collector by a Registration officer.

(14) to remit the fee chargeable on an application made for transfer of a stock-note from one circle to another under paragraph 6 of Resolution No. 2566, dated the 20th August, 1885;

(15) to remit the fees chargeable on the following documents, namely,

- (a) copy of a charge framed under section 210 of the Code of Criminal Procedure, 1882,<sup>3</sup> or of a translation thereof, when the copy is given to an accused person;
- (b) copy of the evidence of supplementary witnesses after commitment when the copy is given under section 219 of the said Code to an accused person;
- (c) copy or translation of a judgment in a case other than a summons-case, and copy of the heads of Judge's charge to the jury, when the copy or translation is given under section 371 of the said Code to an accused person;
- (d) copy or translation of the judgment in a summons-case, when the accused person to whom the copy or translation is given under section 371 of the said Code is in jail;
- (e) copy of an order of maintenance, when the copy is given under section 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid;
- (f) copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury or of any order, deposition or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is a copy which, on its being applied for under section 548 of the said Code, the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment;
- (g) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or

<sup>1</sup> Genl. Acts, Vol. III.

<sup>2</sup> See now the Indian Stamp Act, 1899 (2 of 1899), s. 42, Genl. Acts, Vol. V.

<sup>3</sup> See now the Code of Criminal Procedure, 1898 (Act, 5 of 1898), Genl. Acts, Vol. V.



Pleader or other persons specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court;

(h) copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation, for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any criminal proceedings;

(i) copies of judgments or depositions required by officers of the Police Department in the course of their duties;

(16) to direct that the fee chargeable—

(a) on an application to a Collector, or to any officer or person discharging all or any of the functions of a Collector, with respect either to liability to assessment or to the amount of an assessment under Act II of 1886 (*an Act for imposing a tax on income derived from sources other than agriculture*), and

(b) on a copy of an order passed under section 26 of the same Act, shall be limited to one anna;

(17) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office;

(18) to direct that, when a part of an estate paying annual revenue to the Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter of a suit for the possession of, or to enforce a right of pre-emption in respect of, a fractional share of that part shall, for the purposes of the computation of the amount of the fee chargeable in the suit, be deemed not to exceed five times such portion of the revenue separately assessed on that part as may be rateably payable in respect of the share;

(19) to direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted, except where otherwise expressly provided by this notification;

<sup>1</sup>(19a) to remit the fee chargeable on an application for the grant of a license for the vend of stamps;

<sup>2</sup>(19b) to direct that no Court-fee shall be charged on an application for the repayment of a fine or of any portion of a fine the refund of which has been ordered by competent authority;

<sup>1</sup> Clause (19a) was inserted by Notification No. 4276-S. R., dated 23rd September, 1897, *see* Gazette of India, 1897, Pt. I, p. 864,

<sup>2</sup> Clause (19b) forms the subject of a separate Notification (No. 3389-S. R., dated 6th August, 1896, *see* Gazette of India, 1896, Pt. I, p. 604), and is inserted here in this form for convenience of reference.

<sup>1</sup>(19c) to remit the fees chargeable on applications for copies of documents detailed in clauses 4 and 15, *supra*;

<sup>1</sup>(19d) to remit the duty chargeable in respect of Indian Probates, Letters of Administration or Succession Certificates on the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1882 (VI of 1882), provided that the said share or interest was registered in a branch register in the United Kingdom under the Indian Companies (Branch Registers) Act, 1900 (IV of 1900), and that such member was at the date of his decease domiciled elsewhere than in India;

<sup>1</sup>(19e) to remit the fees chargeable on applications presented to officers of land revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed;

<sup>1</sup>(19f) to remit the fee chargeable on applications and petitions presented to a Collector or any Revenue officer having jurisdiction equal or subordinate to a Collector for advice or assistance from the Agricultural Department of the Province;

(19g) (a) to remit all fees payable under Schedule II upon applications relating to licenses or duplicates granted or renewed under the Indian Arms Rules, 1909, other than licenses or duplicates of the nature hereinafter referred to in subhead (b) and

(b) to reduce to one anna all fees exceeding one anna payable under the Schedule upon applications relating to licenses or duplicates granted or renewed under the said rules in respect of which

(i) no fee is payable under the said rules or

(ii) the fee payable under the said rules has been collected in full.

(19h) to remit the fees chargeable on applications for the grant of licenses of the nature mentioned in items 8 and 9 of the Schedule II appended to the Indian Explosives Rules, 1914, to possess gunpowder, other explosive or detonators required *bona fide* for blasting purpose. No. 1938 F., dated 17-12-1914, Gazette of India, 19-12-1914, Part I.

(19i) to make in the whole of British India the remissions hereinafter set forth in the fees leviable under articles 11, 12, 12-A of the First Schedule of the said Act, on the property of any person

<sup>1</sup> Clause (19c) forms the subject of a separate Notification (No. 1180-Exc., dated 24th February, 1905, *see* Gazette of India, 1905, Pt. I, p. 117).

Clauses (19d to 19f) also form the subject of separate Notifications, *see* Notifications Nos 881-S. R., dated the 17th February, 1900, 4385-S. R., dated the 19th August, 1901, 6069-Exc., dated the 26th October 1906. Gazette of India, 1900, 1901, 1906, Pt. I, pp. 100, 608 and 760, respectively.

subject to Military law either under the Army Act (44 and 45 Vict. C. 58) or under the Indian Army Act, VIII of 1911, who is killed or dies of wounds inflicted, accident occurring or disease contracted within twelve months before the death while on active service in the present war, namely :—

- (a) where the amount or the value of the property in respect of which the grant of probate or letters of administration is made or which is specified in the certificate under the Succession Certificate Act, 1899, or in the certificate under Bombay Regulation No. 8 of 1827, does not exceed Rs. 5,000, to remit the whole of the fees leviable in respect of the property,
- (b) where the said amount or value exceeds Rs. 5,000 to remit the whole of the said fees in respect of the first Rs. 5,000 and
- (c) where any property passes more than once in consequence of such deaths, to remit in the case of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property. No. 120 F., dated 14-1-1915, Gazette of India, 6-1-1915, Part I, pp. 160, 161.

(19f) to remit in the whole of British India the fees chargeable under article 1 (a) and (b) of Schedule II of the Act on applications for mutation of names in respect of the property of any person subject to military law either under the Army Act (44 and 45 Vict., C. 58) or under the Indian Army Act, 1911 (VIII of 1911) who is killed or dies of wounds inflicted, accident occurring or disease contracted within 12 months, before death, while on active service in the present war. No. 371F., dated 25-2-1915, Gazette of India, dated 27-9-1915. Part I, p. 350.

(19k) to remit the fees chargeable on applications for the grant of licenses issued in accordance with the provisions of any rule made under section 9 of the Petroleum Act, 1899 (VIII of 1899) for the possession of dangerous petroleum for use on motor vehicles and for its transport thereon for the purpose of use therein. No. 134F., dated 27-9-1916, Gazette of India, dated 30-9-1916, Part I, p. 1461.

*B.—Special for the Presidency of Fort St. George only.*

<sup>1</sup>(20) to direct that the fees chargeable on the following documents filed in claims preferred under the Madras Hereditary Village Offices Act, 1895 (Madras Act III of 1895), shall be limited to the sum specified below against each, namely :—

<sup>1</sup> Clause (20) was substituted for the original clause by Notification No. 3449-S. R., dated the 6th August, 1897, Gazette of India, 1897, Pt. I, p. 696.

plaint, petition for execution or memorandum of appeal to a collector—eight annas ;

memorandum of appeal to the Board of Revenue—two rupees ;

<sup>1</sup> (21) to remit the fees chargeable (a) on copies of judgments, decrees, or orders passed on claims preferred under the Madras Hereditary Village Offices Act, 1895 (Madras Act III of 1895), and (b) on applications filed by either party in the course of the trial of suits or appeals or in the course of execution of decrees under the said Act ;

(22) to remit the fees chargeable under the First Schedule on complaints in summary suits brought before Collectors under <sup>2</sup> Madras Act VIII of 1865 (*An Act to consolidate and improve the laws which define the process to be taken for the recovery of rent*) ;

(23) to reduce the fees chargeable in suits by Government raiyats, for the recovery of land sold for arrears of revenue, to the amount which would be chargeable if the value of the subject matter were only the rent of the land payable for the year next before the date of presentation of the plaint ;

<sup>3</sup> (23a) to remit the fees chargeable under the said Act on applications made by toddy-drawers and shop-keepers for the grant of licenses permitting them or their servants to draw toddy from cocoanut and other palms.

<sup>4</sup> (23b) to remit the fees chargeable on all communications made under Chapter II of the Madras Proprietary Estates Village Service Act, 1894 (Mad. Act II of 1894) by a proprietor to any Revenue Officer relating to the appointment and control of village officers ;

<sup>5</sup> (23c) to remit the fees chargeable on certain applications made by cultivators of the hemp plant (*Cannabis Sativa* or *Indica*) in the Madras Presidency ;

<sup>6</sup> (23d) to remit the fees chargeable on applications made by distillers and warehouse-keepers in the Madras Presidency to the Excise officer in charge of the distillery or warehouse for the issue of a permit for the transport of country spirit ;

(23e) to remit the fees chargeable under item 1 (a) of Schedule II of the Act on applications for transfer of registry in the revenue

1 Clause (21) was substituted for the original clause by Notification No. 3449 S. R., dated the 6th August, 1897, Gazette of India, 1897, Pt. I, p. 696.

2 See now Madras Estates Land Act, 1908 (Madras Act I of 1908).

3 Clause (23a) was inserted by Notification No. 2661 S. R., dated the 15th June, 1897, see Gazette of India, 1897, Pt. I, p. 525.

4 See Notification No. 3310 S. R., dated the 4th June, 1903, Gazette of India, 1903, Pt. I, p. 399.

5 See Notification No 225 S. R., dated the 11th January, 1901, Gazette of India, 1901, Pt. I, p. 32. And No. 6260-S. R., dated the 12th December, 1901, Gazette of India, 1901, Pt. I, p. 1030.

accounts in respect of ryotwari holdings in the Madras Presidency. No. 874 F., dated 29-8-1913, Gazette of India, dated 29-8-1913, Part I, p. 826.

*C.—Special for the Bombay Presidnecy.*

*D.—Special for Bengal.*

*E.—Special for Agra.*

*F.—Special for United Provinces.*

<sup>1</sup> *F.—Special for N. W. F. Province.*

See SEPARATE NOTIFICATIONS *infra*.

*G.—Special for the Punjab only.*

(42) to remit the fees chargeable on copies of orders or proceedings under section 47 of the <sup>2</sup> Punjab Land Revenue Act, XVII of 1887, made or recorded by Collectors or other Revenue-officers engaged in revising a record of rights under a notification <sup>3</sup> published in accordance with section 32 of the said Act :

Provided that the copy if furnished for the purpose of being filed with an application or petition to a Collector or other Revenue officer engaged as aforesaid in revising a record-of-rights, or to the Commissioner of the Division, or to the Financial Commissioner, Punjab, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interests therein, is presented previous to the final confirmation of such revision ;

(43) to remit the fees chargeable on applications under section 97, of the <sup>2</sup> Punjab Land Revenue Act, XVII of 1887, made by village-officers in accordance with the provisions of rule 83 of the rules under that Act published with the <sup>4</sup> Notification of the Punjab Government, No. 76, dated the 1st March, 1888 ;

<sup>5</sup>(43a) to remit in the territories administered by the Lieutenant-Governor of the Punjab the fees chargeable on plaints and suits brought against British subjects by Bhuttanis ordinarily residing outside British India :—

- (i) for the recovery of debts ;
- (ii) appertaining to the custody of a woman ; or
- (iii) appertaining to inheritance ;

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<sup>1</sup> See Notification No. 3844-S. R., dated 26th June, 1903, Gazette of India, 1903, Pt. I, p. 538.

<sup>2</sup> Punjab and N. W. Code.

<sup>3</sup> See Notification No. 5481-S. R., dated the 15th October, 1902, Gazette of India, 1902, Pt. I, p. 753.

<sup>4</sup> See Punjab Gazette, 1888, Pt. I, pp. 279 and 301.

<sup>5</sup> See Notification No. 2807 S. R., dated 26th June, 1896, Gazette of India, 1896, Pt. I, p. 604.

<sup>1</sup> (43b) to remit in the territories administered by the Lieutenant-Governor of the Punjab, the fees chargeable on copies of all records maintained under the provisions of Chapter VI of the Punjab Land Revenue Act, 1887 (XVII or 1887), when such copies are exhibited or recorded in any Court of Justice or are received or furnished by any public officer ;

(43c) to remit the fees chargeable under the Act on applications for the grant of fishing licenses prescribed by the rules made by the Government of the Punjab under section 3 of the Punjab Fisheries Act, 1914 (II of 1914).

#### *H.—Special for Burma only.*

<sup>2</sup> (44) to remit the fees chargeable on the following documents furnished to cultivators, namely :

certified copies of extracts from settlement or supplementary survey registers containing particulars of the holdings of cultivators ;

<sup>3</sup> (45) to remit the fees chargeable in Upper Burma on plaints, applications, petitions and copies which are filed, exhibited or recorded in the Court of a Circle Officer, or in any Court presided over by a Thugyi or Myothugyi, or which are received or furnished by a Thugyi or Myothugyi ;

*Explanation.*—For the purposes of this clause the expression “Thugyi or Myothugyi” includes any person, however designated, who in any part of Upper Burma occupies a position similar to that which is held in other parts by a Thugyi or Myothugyi ;

<sup>4</sup> (46) to remit in Lower Burma the fees chargeable on applications presented under section 45 of the <sup>5</sup> Burma Land and Revenue Act (II of 1876), by Revenue-officers with a view to the realization of arrears of revenue ;

<sup>6</sup> (46a) to remit in all parts of Burma except the Shan States the fees chargeable under section 35 of the Act on applications presented to officers of land-revenue for the notification of errors in the assessment of land-revenue ;

#### *I.—Special for the Central Provinces only.*

(47) to direct that the fee chargeable on a petition of objection to assessment under <sup>7</sup> Act XIV of 1867 (*An Act to provide for the*

<sup>1</sup> See Notification No. 4283 S. R., dated the 6th August, 1902, Gazette of India, 1902, Pt. I, p. 577.

<sup>2</sup> Clauses 44 and 45 were substituted for clauses 44 to 46 by Notification No. 4724 S. R., dated the 22nd October, 1897, see Gazette for India, 1897, Pt. I, p. 956.

<sup>3</sup> Notification No. 2243-S. R., dated 22nd May, 1896, Gazette of India, 1896, Pt. I, p. 379.

<sup>4</sup> Bur. Code.

<sup>5</sup> See Notification No. 4720-S. R., dated the 2nd August, 1902, Gazette of India, 1902, Pt. I, p. 613.

<sup>6</sup> Rep. Act 6 of 1902. The tax called to was abolished by the same Act. This clause is therefore obsolete.

*Assessment of the Pandhari-tax in certain part of the Central Provinces*) shall, whatever may be the amount of the assessment to which the petition relates, be limited to one anna;

<sup>1</sup>(47a) to remit the fees chargeable on applications presented to Courts in the Central Provinces with reference to sections 257-A and 258 of the Code of Civil Procedure (Act XIV of 1882) in relation to awards made in the course of conciliation proceedings held with the sanction of the Local Government;

*K.—Special for the Bombay Presidency, Bengal, the North-Western Provinces and Oudh, the Punjab, Lower Burma, the Central Provinces, Ajmer and Coorg.*

<sup>2</sup>(48) to direct that whenever, upon payment of the full fee, a certificate of administration has been granted under <sup>3</sup> Act XL of 1858 (*An Act for making better provision for the care of the persons and property of Minors in the Presidency of Fort William in Bengal*) or <sup>3</sup> Act XX of 1864 (*An Act for making better provision for the care of the person and property of Minors in the Presidency of Bombay*), and a fresh certificate is for any reason subsequently granted in respect of the same estate, no fee shall be chargeable upon the fresh certificate so granted.

#### BRITISH BELUCHISTAN.

The Governor-General of India in Council has been pleased to extend the remissions and reductions specified in rules 1 to 19. (b) set out above to British Beluchistan by Notification No. 3633 I. B. of the Government of India, dated 22nd November 1913, and published in the Gazette of India dated the 22nd November 1913, Part I, pages 1109 to 1112.

#### B—BENGAL.

Revised Notification under section 35 of the Court-fees Act, by the Government of BENGAL.

*No. 1872 J.—The 23rd May 1921.*—Under section 35 of the Court-fees Act, 1870 (VII of 1870), as amended by the Devolution Act, 1920 (XXXVIII of 1920), and in supersession of all previous notifications under that section, it is hereby notified that in exercise of the power to reduce or remit in the whole or in any part of the territories under his administration, all or any of the fees mentioned in the First and Second Schedules of the Court-fees Act, 1870 (VII

<sup>1</sup> See Notification (No. 4064-S. R., dated the 25th July, 1902), Gazette of India, Pt. I, p. 550.

<sup>2</sup> Clause (48) is obsolete.

<sup>3</sup> The Minors Act (40 of 1858) and the Minors (Bombay) Act (20 of 1864) were repealed by the Guardians and Wards Act, 1890 (8 of 1890), Genl. Acts Vol. IV.

of 1870), the Governor in Council is pleased to make the reductions and remissions hereinafter set forth, namely :—

(1) to remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use, or is no longer required for use and on applications for renewal of stamped paper which has become spoiled or unfit for use;

(2) to remit the fees chargeable on applications in writing, relating exclusively to the purchase of salt which is the property of the Government;

(3) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or officer, without summoning the defendant, rejects it not for any substantial defect but on account of the entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the Court is situated, together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described, and that the value of the stamp should, in his opinion, be refunded;

(4) to remit the fees chargeable on—

(a) copies of village settlement-records furnished to landholders and cultivators during the currency or at the termination of settlement operations,

(b) lists of fields extracted from village settlement-records for the purpose of being filed with petitions of plaint in Settlement Courts:

Provided that nothing in this clause shall apply to copies of judicial proceedings, or to copies of village settlement-records (other than lists of fields) extracted as aforesaid, which may be filed in any Court of office ;

(5) to direct that the fee chargeable on appeals from orders under section 47 of the Code of Civil Procedure, 1908 (Act V of 1908) shall be limited to the amounts chargeable under article 11 of the Second Schedule ;

(6) to remit the fees chargeable on security-bonds for the keeping of the peace by, or good behaviour of, persons other than the executants ;

(7) to remit the fee payable under article 1, clause (c) of the Second Schedule on an application or petition presented to a Chief Commissioner, when the application or petition is accompanied by a petition to the Government of India and contains merely a request that that petition may be forwarded to the Government of India ;



(8) to remit the fees chargeable under articles 6, 7 and 9 of the First Schedule on copies furnished by Civil or Criminal Courts or Revenue Courts or offices for the private use of persons applying for them :

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer ;

(9) to remit the fees chargeable, under paragraph 5 of clause (a) and paragraph 2 of clause (b) of article 1 of the Second Schedule, on applications for orders for the payment of deposits in cases in which the deposit does not exceed Rs. 25 in amount :

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the applications ;

(10) to remit, with reference to clause xi of section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently, when made by persons who do not at the time of application hold the land ;

(11) to remit the fee chargeable on applications for loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884) :

(12) to remit the fees chargeable on an application made by a person to the Collector under sub-section (2) of section 42 of the Indian Stamp Act, 1899 (II of 1899), for the return to that person, or to the Registration Officer who impounded it, of a document impounded and sent to the Collector by a Registration Officer ;

(13) to remit the fees chargeable on the following documents, namely :—

(a) copy of a charge framed under section 210 of the Code of Criminal Procedure, 1898 (Act V of 1898), or of a translation thereof when the copy is given to an accused person,

(b) copy of the evidence of supplementary witnesses after commitment when the copy is given under section 219 of the said Code to an accused person,

(c) copy or translation of a judgment in a case other than a summons case, a copy of the heads of the Judge's charge to jury, when the copy or translation is given under section 371 of the said Code to an accused person,

(d) copy or translation of the judgment in a summons case, when the accused person to whom the copy or translation is given under section 371 of the said Code is in jail,

- (e) copy of an order of maintenance, when the copy is given under section 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid,
  - (f) copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury or of any order, deposition or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is a copy which, on its being applied for under section 548 of the said Code, the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment,
  - (g) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court,
  - (h) copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any criminal proceedings,
  - (i) copies of judgments or depositions required by officers of the Police Department in the course of their duties ;
- (14) to remit in the Presidency of Bengal the fee chargeable on an application to a Collector as defined in the Indian Income-tax Act, 1918 (VII of 1918) with respect either to liability to assessment or to the amount or rate of an assessment or for a refund of income-tax under the Indian Income-tax Act, 1918 (VII of 1918). *Vide* S. R. No. 1498, 30th May 1921, Calcutta Gazette, Pt. I, p. 953 ;
- (15) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office ;
- (16) to direct that when a part of an estate paying annual revenue to the Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter of a suit for the possession of, or to enforce a right of pre-emption in respect of, a fractional share of that part shall for the purposes of the computation of the amount of the fee chargeable in the suit, be deemed not to exceed five times such portion of the revenue separately assessed on that part as may be rateably payable in respect of the share ;

(17) to direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted, except where otherwise expressly provided by this notification ;

(18) to remit the fee chargeable on an application for the grant of a license for the vend of stamp ;

(19) to direct that no court-fee shall be charged on an application for the repayment of a fine or of any portion of a fine the refund of which has been ordered by competent authority ;

(20) to remit the fees chargeable on applications for copies of documents detailed in clauses 4 and 13, *supra* ;

(21) to remit the duty chargeable in respect of Indian Probates, Letters of Administration or Succession Certificates on the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1913 (VII of 1913), provided that the said share or interest was registered in a branch register kept in the United Kingdom in accordance with the provisions of sections 41 and 42 of the said Act, VII of 1913, and that such member was at the date of his decease domiciled elsewhere than in India ;

(22) to remit the fees chargeable on applications presented to officers of land-revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed ;

(23) to remit the fee chargeable on applications and petitions presented to a Collector or any Revenue officer having jurisdiction equal or subordinate to a Collector for advice or assistance from the Agricultural Department of the Province ;

(24) (a) to remit the fees payable under Schedule II upon applications for the grant or renewal of licenses or duplicates under the Indian Arms Rules, 1920, in respect of which a fee is payable under those Rules, and

(b) to reduce to one anna all fees exceeding one anna payable under Schedule II upon other applications relating to licenses or duplicates granted or renewed under the said rules ;

(25) to remit the fees chargeable on applications for the grant of licenses of the nature mentioned in items 8 and 9 of Schedule II appended to the Indian Explosives Rules, 1914, to possess gunpowder, other explosives or detonators required *bona fide* for blasting purposes ;

(26) to remit as follows the fees on the property of any person subject to military law either under the Army Act (44 and 45 Vict., C. 58), or under the Indian Army Act, 1911 (VIII of 1911) who is killed or dies of wounds inflicted, accident occurring or diseases contracted within three years before death while on active service in the present war :—

- (a) where the amount of or value of property in respect of which the grant of probate or letters of administration is made or which is specified in the certificate under the Succession Certificate Act, 1889, does not exceed Rs. 50,000 to remit the whole of the fees leviable in respect of that property ;
- (b) where the said amount or value exceeds Rs. 50,000 to remit the whole of the said fees in respect of the first Rs. 50,000 ; and
- (c) where any property passes more than once in consequences of such deaths to remit in the case of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property.

(27) to remit the fees chargeable on application for mutations of names in respect of the property of any person subject to military law either under the Army Act (44 and 45 Vict., C. 58) or under the Indian Army Act 1911 (VIII of 1911), who is killed, or dies of wounds inflicted, accident occurring or disease contracted within twelve months before death while on active service in the present war ;

(28) to remit the fees chargeable on applications persented to officers of Land Revenue for the suspension or remission of loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884) ;

(29) to remit the fees chargeable on applications for the grant of licenses issued in accordance with the provisions of any rule made under section 9 of the Indian Petroleum Act, 1899 (VIII of 1899), for the possession of dangerous petroleum for the use of motor vehicles and for its transport thereon for the purpose of use therein ;

(30) to remit the fees chargeable on copies of views of Civil or Revenue Courts situate in the territories of His Highness the Gaekwar of Baroda forwarded to any court in British India for execution in pursuance of the provisions of section 44 of the Code of Civil Procedure, 1908 (Act V of 1908) ;

(31) to remit in the Hill Tracts of Chittagong all the fees mentioned in the First and Second Schedules ;

(32) to declare that the proper fee to be charged upon an application to deposit in any Court, rent not exceeding the sum of fifteen rupees, shall be as follows : —

	Proper Fee.
If the amount deposited does not exceed Rs. 2-8	... one anna.
If the amount deposited exceeds Rs. 2-8, but does not exceed Rs. 5.	two annas.
If the amount deposited exceeds Rs. 5, but does not exceed Rs. 10	four annas.
If the amount deposited exceeds Rs. 10, but does not exceed Rs. 15.	six annas.

Provided that no fee shall be chargeable on an application to deposit rent in respect of which a fee is chargeable under any rule framed under sub-section (2) of section 61 of the Bengal Tenancy Act, 1885 (VIII of 1885) ;

(33) to remit the fees chargeable on applications by ryots in the Rajshahi district for licenses to cultivate the hemp plant ;

(34) to remit the fees chargeable on applications or petitions of objection referring to any entry made or proposed to be made in a draft record-of-rights prepared under Chapter 10 of the Bengal Tenancy Act, 1885 (VIII of 1885), provided that such applications or petitions are presented before the publication of such draft record under section 103-A, sub-section (1), of the said Act;

(35) to remit the fees chargeable on certified copies of entries in record-of-rights furnished in accordance with any rules for the time being in force under the Bengal Tenancy Act, 1885 (VIII of 1885), after the final publication of such records-of-rights under section 103-A (2) of the Act;

(36) to remit the fees chargeable on applications for mutation of names in all Government estates;

(37) to remit the fees chargeable on copies of documents furnished by a District Magistrate to a pleader appointed by the court to defend a pauper accused of murder;

(38) to reduce the fees chargeable under clause (iii) of Article 17 of Schedule II of the Act as amended by the Bengal Court-fees Amendment Act, 1922 on plaints relating to suits instituted under section 106 of the Bengal Tenancy Act, 1885 (VIII of 1885), to the amount of an *ad valorem* fee chargeable under article 1 of Schedule I of the Act, in cases where the amount of such fee would be less than Rs. 20 (altered by No. 3789 L. R. dated 3rd April 1922—*Vide* Calcutta Gazette, 5th April 1922, Pt. I, p. 689);

(39) to reduce to the sum of eight annas the court-fees in excess of eight annas chargeable on certified copies of entries in a record-of-rights of a village or a portion thereof maintained under the Bengal Tenancy Act, 1885 (VIII of 1885);

(40) to remit in the Presidency of Bengal the fee leviable under item 1 of the second Schedule to the said Act in the matter of applications made to customs officers by all consular officers for the free entry of goods in pursuance of their official functions;

(41) to remit in the Presidency of Bengal the fees mentioned in the first Schedule to the said Act chargeable in respect of copies of documents required by public officers for filing before Civil Court in suits in which the Government is a party.

(42) to remit the fee chargeable under the Court Fees Act, on applications of sole landlords or their agents or of common agents of joint landlords for payment of the transfer fee, as defined in Rule 24 of the rules under the Bengal Tenancy Act, 1885 (VIII of 1885) published under Notification No. 5462-L. R. dated the 26th March, 1929 at pages 549-592, Part I of the Calcutta Gazette of 28th idem, which is payable to them in accordance with the provisions of that Act. (15-11-30).

(43) to remit the fee on applications under item 1 of the second schedule made to customs officers by the consular officers for the free entry of goods in pursuance of their official function.

## B—BIHAR AND ORISSA.

No. <sup>2576</sup> L.A-25.—Under section 35 of the Court-fees Act, 1870 (VII of 1870), as amended by Act XXXVIII of 1920 and in supersession of all previous notifications under that section, it is hereby notified that, in exercise of the power to reduce or remit in Bihar and Orissa, all or any of the fees mentioned in the First and Second Schedules to the said Act, the Government of Bihar and Orissa have been pleased to make the reductions and remissions hereinafter set forth, namely :—

(1) To remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use, or is no longer required for use and on applications for renewal of stamped paper which has become spoiled or unfit for use ;

(2) to remit the fees chargeable on applications in writing relating exclusively to the purchase of salt which is the property of the Government ;

(3) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or officer, without summoning the defendant, rejects it not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the Court is situated, together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstance above described and that the value of the stamp should, in his opinion, be refunded ;

(4) to remit the fees chargeable on : —

(a) copies of village settlement-records furnished to land-holders and cultivators during the currency or at the termination of settlement operations,

(b) lists of fields extracted from village settlement-records for the purpose of being filed with petitions of plaint in Settlement Courts ;

Provided that nothing in this clause shall apply to copies of village settlement records (other than lists of fields) extracted as aforesaid which may be filed in any Court or office ;

(5) to direct that the fee chargeable on appeals from orders under section 47 of the Code of Civil Procedure, 1908 (Act V of 1908), shall be limited to the amounts chargeable under article 11 of the Second Schedule ;

(6) to remit the fees chargeable on security-bonds for the keeping of the peace by, or good behaviour of, persons other than the executants ;

(7) to remit the fees chargeable under articles 6, 7 and 9 of the First Schedule on copies furnished by Civil or Criminal Courts or

Revenue Courts or offices for the private use of persons applying for them :

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer ;

(8) to remit the fees chargeable, under paragraph 4 of clause (a) and paragraph 2 of clause (b) of article 1 of the Second Schedule, on applications for orders for the payment of deposits in case in which the deposits does not exceed Rs. 25 in amount ; Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application ;

(9) to remit, with reference to clause xi of section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently when made by persons who do not at the time of application hold the land ;

(10) to remit the fees chargeable on applications for loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884) ;

(11) to remit the fee chargeable on an application made by a person to the Collector under sub-section 2 of section 42 of the Indian Stamp Act, 1899 (II of 1899) for the return to that person, or to the Registration officer who impounded it, of a document impounded and sent to the Collector by a Registration officer ;

(12) to remit the fee chargeable on an application made for transfer of a stock-note from one circle to another under paragraph 6 of Resolution No. 2566, dated the 20th August, 1885.

(13) to remit the fees chargeable on the following documents, namely :

- (a) copy of a charge framed under section 210 of the Code of Criminal Procedure, 1893 (V of 1898), or of a translation thereof when the copy is given to an accused person,
- (b) copy of the evidence of supplementary witness after commitment when the copy is given under section 219 of the said Code to an accused person,
- (c) copy or translation of a judgment in a case other than a summons case, and copy of the heads of the Judge's charge to the jury, when the copy or translation is given under section 371 of the said Code to an accused person,
- (d) copy or translation of the judgment in a summons case when the accused person to whom the copy or translation is given under section 371 of the said Code is in jail,
- (e) copy of an order of maintenance when the copy is given under section 90 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid,
- (f) copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury or of any order

deposition or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is a copy which, on its being applied for under section 548 of the said Code, the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment,

(g) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court,

(h) copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation, for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any criminal proceedings,

(i) copies of judgments or depositions required by officers of the Police Department in the course of their duties ;

(14) to direct that the fee chargeable on an application to a Collector, with respect either to liability to assessment or to the amount or rate of an assessment under the Indian Income-tax Act, 1918 (VII of 1918), shall be limited to one anna ;

(15) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office ;

(16) to direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted, except where otherwise expressly provided by the notification ;

(17) to remit the fee chargeable on an application for the grant of a license for the vend of stamp ;

(18) to direct that no court-fee shall be charged on an application for the repayment of a fine or any portion of a fine the refund of which has been ordered by competent authority ;

(19) to remit the fees chargeable on applications for copies of documents detailed in clauses 4 and 13, *supra* ;

(20) to remit the duty chargeable in respect of Indian Probates, Letters of Administration or Succession Certificates on the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1913 (VII of 1913), provided that the said share or interest was registered in a branch register in the United Kingdom under the Indian Companies (Branch Registers) Act, 1900 (IV of 1900) and that such member was at the date of his decease domiciled elsewhere than in India ;

(21) to remit the fees chargeable on applications presented to officer of land revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed ;

(22) to remit the fee chargeable on applications and petitions presented to a Collector or any Revenue officer having jurisdiction



equal or subordinate to a Collector for advice or assistance from the Agricultural Department of the Province ;

(23) (a) to remit the fees payable under Schedule II upon applications for the grant or renewal of licences or duplicates under the Indian Arms Rules, 1920, in respect of which a fee is payable under those rules, and

(b) to reduce to one anna all fees exceeding one anna payable under Schedule II upon other applications relating to licences or duplicates granted or renewed under the said rules ;

(24) to remit the fees chargeable on applications for the grant of licences of the nature mentioned in items 8 and 9 of Schedule II appended to the Indian Explosives Rules, 1914, to possess gun powder, other explosives or detonators required *bona fide* for blasting purposes ;

(25) to remit as follows the fees on the property of any person subject to military law either under the Army Act (44 and 45 Vict., C. 58), or under the Indian Army Act, 1911 (VIII of 1911), who was killed or died of wounds inflicted, accident occurring or diseases contracted within three years before death while on active service in the war terminating on the 31st of August 1921 :—

(a) where the amount of or value of property in respect of which the grant of Probate or Letters of Administration is made or which is specified in the certificate under the Succession Certificate Act, 1889, does not exceed Rs. 50,000 to remit the whole of the fees leviable in respect of that property,

(b) where the said amount or value exceeds Rs. 50,000 to remit the whole of the said fees in respect of the first Rs. 50,000 ; and

(c) where any property passes more than once in consequence of such deaths to remit in the case of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property ;

(26) to remit the fees leviable under articles 11, 12 and 12 (a) of the First Schedule of the said Act, on the property of—

(i) any person subject to the Naval Discipline Act (29 and 30 Vict., C. 109), the Army Act (44 and 46 Vict., C. 58), the Air Force Act (7 and 8 Geo. 5, C. 51) or the Indian Army Act, 1911 (VIII of 1911), who is killed or dies from wounds inflicted, accidents occurring or diseases contracted while on active service or on service which is of a warlike nature or involves the same risk as active service, and

(ii) any person being a Government servant, civil or military, who dies from wounds inflicted while in actual performance of his official duties in consequence of those duties,

(a) where the amount or value of property, in respect of which the grant of probate or letters of administration is made, or which is specified in the certificate under Part X of the Indian Succession Act, 1925, or in the certificate in the Bombay Regulation No. 8 of 1827, does not exceed Rs. 50,000, the whole of the fees leviable in respect of that property,

(b) where the said amount or value exceeds Rs. 50,000 the whole of the said fees in respect of the first Rs. 50,000;

(27) to remit the fees chargeable on applications presented to officers of Land Revenue for the suspension or remission of loans under the Land Improvement Loans Act, 1883 (XIX of 1883) or the Agriculturists' Loans Act, 1884 (XII of 1884);

(28) to remit the fees chargeable on applications for the grant of licences issued in accordance with the provisions of any rule made under section 9 of the Indian Petroleum Act, 1899 (VIII of 1899) for the possession of dangerous petroleum for use on motor vehicles and for its transport thereon for the purpose of use therein;

(29) to remit the fees chargeable on copies of decrees of Civil or Revenue courts situate in the territories of His Highness the Gaekwar of Baroda forwarded to any court in Bihar and Orissa for execution in pursuance of the provisions of section 44 of the Civil Procedure Code, 1908 (V of 1908);

(30) to reduce the fee chargeable on applications for the settlement of fair rents under section 85 of the Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908), to the sum of eight annas for each tenant making or joining or joined in the application, a group of joint owners of a tenancy being treated for the purposes of this clause as a single tenant;

(31) to remit the fees chargeable on certified copies of entries in the record-of-rights furnished in accordance with any rules for the time being in force under the Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908), after the final publication of such records-of-rights under section 83 (2) of that Act;

(32) to remit fees chargeable on applications or petitions of objection referring to any entry made or proposed to be made in—

(a) a draft record-of-rights prepared under Chapter XII of the Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908).

(b) a draft record of praedial conditions prepared under section 107 of that Act,

(c) a draft statement prepared or a tenant's khatian written up under section 111 of the same Act,

(d) a draft record of landlord's privileged lands, prepared under Chapter XIV of the same Act,

(e) a draft record-of-rights and obligations prepared under Chapter XV of the same Act;

Provided that such applications or petitions are presented—

(i) in the case of the documents referred to in clauses (a), (d) and (e)—before the publication of the draft under sub-section (1) of section 83 of the said Act,

(ii) in the case of the documents referred to in clause (b) before the publication of the draft under sub-section (1) of section 108 of the said Act, and

(iii) in the case of the documents referred to in clause (c) before the publication of the draft under clause 5 of section 111 of the said Act;

(33) to reduce to the sum of eight annas the court-fees in excess of eight annas chargeable on certified copies of entries in a record-of-rights of a village or a portion thereof maintained under the Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908);

(34) to reduce the fees chargeable under clause (iii) of Article 17 of Schedule II of Act on plaints relating to suits instituted in the Chota Nagpur Division under sections 87 (1), 111 (8), 120 (read with section 87), 130 (1) and 252 (1) of the Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908) to the amount of an *ad valorem* fee in cases where the amount of such fee would be less than 15 rupees;

(35) to remit the fees chargeable—

(a) on certified copies of entries in record-of-rights furnished, in accordance with any rules for the time being in force, under the Orissa Tenancy Act, 1913 (Bihar and Orissa Act II of 1913), after the final publication of such record-of-rights under section 116 (2) of that Act,

(b) on any application for the deposit of rent in respect of which a fee is paid under section 70 (2) of the Orissa Tenancy Act, 1913 (Bihar and Orissa Act II of 1913).

(c) on applications or petitions of objection referring to any entry made or proposed to be made in a draft record-of-rights prepared under Chapter XI of the Orissa Tenancy Act, 1913 (Bihar and Orissa Act II of 1913): provided that such applications or petitions are presented before the publication of such draft record under section 116 (1) of the said Act;

(36) to reduce the fees chargeable under clause (iii) of article 17 of Schedule II of the Act on plaints relating to suits instituted under section 130 of the Orissa Tenancy Act, 1913 (Bihar and Orissa Act II of 1913), to the amount of an *ad valorem* fee chargeable under article 1, Schedule I of the Act in cases where the amount of such fee would be less than Rs. 15;

(37) to reduce to the sum of eight annas the fees in excess of eight annas chargeable on certified copies of entries in a record-of-rights of a village or a portion thereof maintained under the Orissa Tenancy Act, 1913 (Bihar and Orissa Act II of 1913):

(38) to declare that the proper fee to be charged upon an application to deposit in any Court, rent not exceeding the sum of fifteen rupees, shall be as follows:

	Proper fee.
If the amount deposited exceeds Rs. 2-8-0, ... ..	One anna.
If the amount deposited exceeds Rs. 2-8-0 but does not exceed Rs. 5...	Two annas.
If the amount deposited exceeds Rs. 5 but does not exceed Rs. 10...	Four annas.
If the amount deposited exceeds Rs. 10 but does not exceed Rs. 15.	Six annas.

Provided that no fee shall be chargeable on an application to deposit rent in respect of which a fee is chargeable under any rule

framed under sub-section (2) of section 61 of the Bengal Tenancy Act, 1885 (VIII of 1885);

(39) to remit the fees chargeable on applications or petitions of objection referring to any entry made or proposed to be made in a draft record-of-rights prepared under Chapter 10 of Bengal Tenancy Act, 1885 (VIII of 1885), as amended by the Bengal Tenancy (Amendment) Act, 1898 (Bengal Act III of 1898): provided that such applications or petitions are presented before the publication of such draft record under section 103-A, sub-section (1) of the said Act;

(40) to remit the fees chargeable on certified copies of entries in record-of-rights furnished in accordance with any rules for the time being in force under the Bengal Tenancy Act, 1885 (VIII of 1885), after the final publication of such record-of-rights under section 103-A (2) of that Act;

(41) to remit the fees chargeable on copies of documents furnished by a District Magistrate to a pleader by the court to defend a pauper accused of murder;

(42) to reduce the fees chargeable under clause (iii) of article 17 of Schedule II of the Act on plaints relating to suits instituted under section 106 of the Bengal Tenancy Act, 1885 (VIII of 1885), to the amount of an *ad valorem* fee chargeable under article I of Schedule I of the Act, in cases where the amount of such fee would be less than Rs. 15;

(43) to reduce to the sum of eight annas the court-fees in excess of eight annas chargeable on certified copies of entries in a record-of-rights of a village or a portion thereof maintained under the Bengal Tenancy Act, 1885 (VIII of 1885);

(44) to direct that when a record-of-rights is being prepared under Chapter X of the Bengal Tenancy Act, 1885, in pursuance of an order made otherwise than under section 101, clause (d) of the latter Act, and any application is made under section 104, sub-section (2) of that Act for a settlement of rent the fee payable on such application shall not exceed the sum of eight annas for each tenant making or joined in such application.

(45) To remit the fees chargeable on applications made to a Magistrate under the Indian Motor Vehicles Act, 1914 (VIII of 1914), for the registration of a Motor Vehicle and for a licence to drive it;

(46) To remit the fees chargeable on applications made to a Collector for exemption, refund or abatement of income-tax or super-tax under the Indian Income-tax Act, 1918 (VII of 1918) or Super-tax Act, 1920 (XIX of 1920).

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## D—BOMBAY.

The Government of Bombay Notification No. 590, dated 16th September 1921, published in the Bombay Government Gazette, dated 22nd September 1921.

*Secretariat, Fort, Bombay, 16th September 1921.*

No. 590.—In exercise of the powers conferred by section 35 of the Court-fees Act, 1870 (VII of 1870 as amended by Act XXXVIII of 1920, and in supersession of so much of all previous notifications under that section issued by the Governor-General in Council as relates to the reduction or remission of all or any of the fees mentioned in the First and Second Schedule to the said Act, in the territories under the administration of the Government of Bombay, the Governor in Council is pleased to make the following reductions and remissions of the fees mentioned in the First and Second Schedules to the said Act, namely:—

(1) To remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use, or is no longer required for use and on applications for renewal of stamped paper which has become spoiled or unfit for use:

(2) to remit the fees chargeable on applications in writing, relating exclusively to the purchase of salt which is the property of the Government;

(3) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or officer, without summoning the defendant rejects it not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the Court is situated together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described, and that the value of the stamp should, in his opinion, be refunded;

(4) to remit the fees chargeable on—

(a) copies of village settlement records furnished to landholders and cultivators during the currency or at the termination of settlement operations,

(b) lists of fields extracted from village settlement records for the purpose of being filed with petitions of plaint in Settlement Courts;

Provided that nothing in this clause shall apply to copies of judicial proceedings, or to copies of village settlement-records (other than lists of fields) extracted as aforesaid, which may be filed in any Court or office;

(5) to direct that the fee chargeable on appeals from orders under section 47 of the Code of Civil Procedure, 1908 (V of 1908), shall be limited to the amounts chargeable under article 11 of the Second Schedule;

(6) to remit the fees chargeable on security-bonds for the keeping of the peace by, or good behaviour of, persons other than the executants;

(7) to remit the fees chargeable under articles 6, 7 and 9 of the First Schedule on copies furnished by Civil or Criminal Courts or Revenue Courts or Officers for the private use of persons applying for them;

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer;

(8) to remit the fees chargeable, under paragraph 4 of clause (a) and paragraph 2 of clause (b) of article 1 of the Second Schedule, on applications or orders for the payment of deposits in case in which the deposit does not exceed Rs. 25 in amount :

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application ;

(9) to remit, with reference to clause (xi) of section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently, when made by persons who do not at the time of application hold the land ;

(10) to remit the fees chargeable on application for loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884);

(11) to remit the fee chargeable on an application made by a person to the Collector under sub-section (2) of section 42 of the Indian Stamp Act, 1899 (II of 1899) for the return to that person or to the Registration officer who impounded it, of a document impounded and sent to the Collector by a Registration officer ;

(12) to remit the fees chargeable on the following documents, namely :—

(a) copy of a charge framed under section 210 of the Code of Criminal Procedure, 1898 (V of 1898) or of a translation thereof, when the copy is given to an accused person,

(b) copy of the evidence of supplementary witnesses after commitment when the copy is given under section 219 of the said Code to an accused person,

(c) copy or translation of a judgment in a case other than a summons case, and copy of the heads of the Judge's charge to the jury, when the copy or translation is given under Section 371 of the Code to an accused person,

- (a) copy or translation of the judgment in a summons case, when the accused person to whom the copy or translation is given under section 371 of the said Code is in jail,
- (e) copy of an order of maintenance, when the copy is given under Section 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid.
- (f) copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury or of any order, deposition or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is a copy which on its being applied for under section 548 of the said Code, the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment,
- (g) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court,
- (h) copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation, for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any Criminal proceeding,
- (i) copies of judgments or depositions required by officers of the Police Department in the course of their duties ;

(13) to remit the fee chargeable on an application to a Collector, with respect either to liability to assessment or to the amount or rate of an assessment or for a refund of income-tax under the Indian Income-tax Act, 1918 (VII of 1918) ;

(14) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office ;

(15) to direct that, when a part of an estate paying annual revenue to the Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter in a suit for the possession of, or to enforce a right of pre-emption in respect of, a fractional share of that part shall, for the purposes of the computation of the amount of the fee chargeable in the suit, be deemed not to exceed five times such portion of the revenue separately assessed on that part as may be rateably payable in respect of the share ;

(16) to direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted, except where otherwise expressly provided by this notification ;

(17) to remit the fee chargeable on an application for the grant of a licence for the vend of stamp ;

(18) to direct that no court-fee shall be charged on an application for the repayment of a fine or of any portion of a fine the refund of which has been ordered by competent authority ;

(19) to remit the fees chargeable on applications for copies of documents detailed in clauses 4 and 12, *supra*;

(20) to remit the duty chargeable in respect of Indian Probates, Letters of Administration or Succession Certificates on the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1913 (VII of 1913) provided that the said share or interest was registered in a Branch Register in the United Kingdom under the Indian Companies (Branch Registers) Act, 1900 (IV of 1900) and that such member was at the date of his decease domiciled elsewhere than in India;

(21) to remit the fees chargeable on applications presented to officers of land revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed;

(22) to remit the fee chargeable on applications and petitions presented to a Collector or any Revenue officer having jurisdiction equal or subordinate to a Collector for advice or assistance from the Agricultural Department of the Province;

(23) (a) to remit the fees payable under Schedule II upon applications for the grant or renewal of licences or duplicates under the Indian Arms Rules, 1920 in respect of which a fee is payable under those Rules, and

(b) to reduce to one anna all fees exceeding one anna payable under Schedule II upon other applications relating to licences or duplicates granted or renewed under the said rules;

(24) to remit the fees chargeable on applications for the grant of licences of the nature mentioned in items 8 and 9 of Schedule II appended to the Indian Explosives Rules, 1914, to possess gunpowder, other explosives or detonators required *bona fide* for blasting purposes;

(25) to remit as follows the fees on the property of any person subject to military law either under the Army Act (44 and 45 Vict., C. 58) or under the Indian Army Act, 1911 (VIII of 1911), who is killed or dies of wounds inflicted, accident occurring or diseases contracted within three years before death while on active service in the present war:—

(a) where the amount of or value of property in respect of which the grant of Probate or Letters of Administration is made or which is specified in the certificate under the Succession Certificate Act, 1889, or in the certificate under Bombay Regulation No. 8 of 1827, does not exceed Rs. 50,000 to remit the whole of the fees leviable in respect of that property.

(b) where the said amount or value exceeds Rs. 50,000 to remit the whole of the said fees in respect of the first Rs. 50,000 and

(c) where any property passes more than once in consequence of such deaths to remit, in the case of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property.

(26) to remit the fees chargeable on applications for mutations of names in respect of the property of any person subject to military



law either under the Army Act (44 and 45 Vict., C. 58) or under the Indian Army Act, 1911 (VIII of 1911), who is killed or dies of wounds inflicted, accident occurring or disease contracted within twelve months before death while on active service in the "present" war ;

(27) to remit the fees chargeable on applications presented to officers of Land Revenue for the suspension or remission of loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act 1884 (XII of 1884) ;

(28) to remit the fees chargeable on applications for the grant of licences issued in accordance with the provisions of any rule made under section 9 of the Indian Petroleum Act, 1899 (VIII of 1899), for the possession of dangerous petroleum for use on motor vehicles and for its transport thereon for the purpose of use therein :

(29) to remit the fees chargeable on copies of decrees of Civil or Revenue Courts situate in the territories of His Highness the Gaekwar of Baroda forwarded to any Court in British India for execution in pursuance of the provisions of section 44 of the Civil Procedure Code, 1908 (V of 1908) ;

(30) to remit the fees chargeable under the Second Schedule on agreements required by Rules 37, 43, and 52 of the Land Revenue Code Rules, 1921 ;

(31) to reduce to a uniform rate of four annas per copy the fee chargeable under article 7 of the First Schedule on copies of decrees or orders having the force of a decree issued by Mamlatdars under the Mamlatdars Courts Act, 1906 (Bom. II of 1906) ;

(32) to remit the fees chargeable under article 1 of the Second Schedule on all applications made to a Collector or other Revenue Officer, or to the Chief Controlling Revenue Authority, by any of the under-mentioned political pensioners, being the eldest sons or representatives of the ex-Amirs of Sindh and Sardars of note :—

District.	Number and Names of Pensioners.
Hyderabad.	(1) His Highness Mir Nur Muhammad Khan, son of Mir Hussain Ali Khan, Talpur.
Thar Parkar.	(2) His Highness Mir Fatch Khan, son of Mir Sher Mahomed Khan, Talpur.
Sukkur.	(3) Mir Fazl Hussain Khan, son of Mir Sohrab Khan, Talpur.

(33) to remit the fees chargeable in respect of the documents specified in the First or Second Schedule in the case of suits instituted before village-munsifs under Chapter V of the Dekkhan Agriculturists' Relief Act, 1879 (XVII of 1879) ;

(34) to remit the fees chargeable on copies of documents furnished by a Court of Session or the High Court, or by the Sadar Court in Sindh, to a pleader appointed by the Court to defend a person accused of murder ;

(35) to remit the fees chargeable under article 1, clauses (b) and (c) of Schedule II on applications made to a Collector, or other Revenue officer, or to any Chief Controlling Revenue or Executive Authority, for permission to cut and remove jungle wood for fuel, or thorns for fencing, from lands which are unalienated and unoccupied within the meaning of the Bombay Land Revenue Code, 1879 ;

(36) to remit the fees chargeable on certified copies on applications for certified copies of entries in record-of-rights maintained under the Bombay Land Revenue Code, 1879 (Bom. Act V of 1879), and on application for such copies when required for filing in Court under section 135-H of the Act ;

(37) to remit the fees chargeable on certain copies of extracts from entries in record of rights maintained under the Bombay Land Revenue Code, 1879 (Bom. Act V of 1879), when such copies are attached to applications for the execution of Civil Court decrees ;

(38) to remit the fees chargeable (i) on applications made to the excise officer-in-charge of the distillery or warehouse for the issue of a permit for the transport of country spirits, (ii) on applications made by the licencees of intoxicating drug shops for transport permits of duty-paid drugs ;

(39) to remit the fee chargeable on application made by the licencees of opium shops or by farmers of the monopoly districts for transport permits ;

(40) to remit the fees chargeable on applications for the grant of licences to tap toddy trees for domestic consumption in the Panch Mahals Districts ;

(41) to remit the fees chargeable on applications made to village officers for copies of entries in the record-of-rights registers under section 135-K of the Bombay Land Revenue Code, 1879 (Bom. Act V of 1879).

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#### E--BURMA.

No. 41.—In exercise of the powers conferred by section 35 of the Court-fees Act, 1870, as amended by the Devolution Act, 1920, and in supersession of the Notifications set forth in the schedule appended hereto, the Local Government is pleased to remit or reduce, as the case may be, in the whole of Burma the fees mentioned in the First and Second Schedules of the said Act to the extent detailed below :—

I. If the amount of the fee chargeable in any case involves a fraction of an anna, that fraction shall be remitted.

II. No fee shall be chargeable in respect of the following applications :—

*A.—General.*

1. Applications requesting that an enclosed petition may be forwarded to the person to whom it is addressed.

2. Applications made on behalf of Government by a Government officer or servant.

3. Applications for the return of documents filed in any Court or public office.

4. Applications for copies of documents in respect of which copies no court-fee is chargeable.

5. Applications for repayment of deposits or payment of any sum the payment of which has been duly sanctioned by competent authority.

6. Applications for rectification in errors of assessment.

7. Applications for the advice or assistance of the Agricultural Department.

8. (1) A claim preferred to the revising authority by a person whose name is not entered on the electoral roll for the Council of State, or the Indian Legislative Assembly or the Local Legislative Council and who claims to have it inserted therein.

(2) An objection preferred to such authority by any person whose name is on the roll and who objects to the inclusion of his own name or of the name of any other person on this roll.

*B.—Specific Enactments.*

1. *Arms Act.*—Applications for the grant or renewal of arms licences or otherwise relating to such licences.

2. *Explosives Act.*—Applications for licences to possess gun-powder, other explosives or detonaters required *bona fide* for blasing purposes.

3. *Government Loans Enactments.*—Applications for the grant, suspension or remission of loans under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884.

4. *Income-tax Act.*—Applications with respect either to liability to assessment or to the amount or rate of an assessment or for a refund of income-tax.

5. *Land Revenue Enactments—*

(a) Applications for permission to occupy Government land for purposes of cultivation.

(b) Applications for the suspension or remission of land revenue on the ground that a crop has not been sown or has failed.

- (c) Applications for mutation of names in respect of the property of any person subject to military law either under Army Act, 1881 (44 and 45 Vict., C. 58), or under the Indian Army Act, 1911, who is killed or dies of wounds inflicted, accident occurring or disease contracted within twelve months before death while on active service in the Great War of 1914-18.

6. *Petroleum Act*.—Applications for the grant of licences for the possession of dangerous petroleum for use on motor vehicles and its transport thereon for the purpose of use therein.

7. *Salt Act*.—Applications to purchase salt belonging to Government.

8. *Stamp and Court-Fees Acts*.—Applications for—

- (a) refund of the amount paid to Government for stamped paper which has become spoiled or unfit for use or is no longer required for use ;
- (b) renewal of stamped paper which has become spoiled or unfit for use ;
- (c) return of documents impounded by Collector [Indian Stamp Act, 1899, section 42 (2)]
- (d) a stamp vendor's license,

III. The fee chargeable on appeals from orders under section 47 of the Code of Civil Procedure, 1908, shall be limited to the amounts chargeable under Article 11 of the Second Schedule.

IV. No court-fees shall be chargeable upon copies in the following cases :

- (a) Copies of proceedings or orders supplied to applicants requiring such copies for their private use only, and not such presented to any public court or officer.
- (b) Copies of proceedings or orders supplied to Government officers or servants in the course of their duties.
- (c) Copies of documents in connection with any legal proceedings which are required by or for any person duly retained on behalf of or at the expense of Government to assist in such legal proceedings.
- (d) Copies directed to be furnished free of cost under the Criminal Procedure Code.
- (e) Copies of decrees of Civil or Revenue Courts situated in the territories of His Highness the Gaekwar of Baroda forwarded to any Court in British India for execution in pursuance of the provisions of section 44 of the Civil Procedure Code, 1908,
- (f) Copies of entries in settlement and supplementary survey maps and registers relating to land standing in the name of, or actually in the occupation of, the applicant.

V. *Plaints*.—

- (a) Where plaint disclosing a reasonable case on the merits is presented to any Civil Court or Revenue Officer in such a form that the Presidency Judge or Officer without summoning the defendant rejects it, not for any substantial defect, but on account of an entirely technical error in form only and so as to leave the plaintiff free to prosecute precisely the same

case in another form against the same defendant, the value of the stamp on the plaint shall be refunded on its presentation to the Collector of the district with a certificate from the Judge or Officer who rejected it that it was rejected in the circumstances above described and that in his opinion the value of the stamp should be refunded.

- (b) The value of the subject-matter of a suit for the possession of or to enforce a right of pre-emption in a fractional share of a holding assessed separately to land revenue shall, for the purpose of computing the amount of the fees chargeable in the suit, be deemed not to exceed five times such portion of the revenue assessed on the holding as may be payable rateably in respect of the share.

#### VI. *Probates and Letters of Administration.*

- (a) No fee shall be chargeable in respect of Indian Probates, Letters of Administration or Succession Certificates in the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1913, provided that the said share or interest was registered in a branch register in the United Kingdom under the Indian Companies (Branch Registers) Act, 1900, and that such member was at the date of his decease domiciled elsewhere than in India.

- (b) The fee chargeable under Articles 11, 12 and 12A of the first Schedule on the property of—

- (i) any person subject to the Naval Discipline Act (29 and 30 Vict., C, 109), the Army Act (7 and 8 Geo, 5, C, 51), or the Indian Army Act, 1911 VII of 1911), who is killed while on active service or on service which is of a warlike nature or involves the same risk as active service, or dies from wounds inflicted accidents occurring or disease contracted while on such service and

- (ii) any person being a Government servant, Civil or Military, who dies from wounds or injuries intentionally inflicted while in actual performance of his official duties or in consequence of those duties, shall be remitted to the following extent:—

(1) where the amount or value of property in respect of which the grant of probate or letters of administration is made, or which is specified in the certificate under [Part X of the Indian Succession Act, 1925] does not exceed Rs. 50,000 the whole of the fees leviable in respect of that property;

(2) when the said amount or value exceeds Rs. 50,000, the whole of the said fees in respect of the first Rs. 50,000,

VII. No fee shall be chargeable in respect of any bond prescribed by the Criminal Procedure Code.

#### F—CENTRAL PROVINCES.

List of reductions and remissions authorised by the Governor in Council under section 35 of the Court-fees Act, 1870.

No. 79-292-XI.—In exercise of the powers conferred by section 35 of the Court-fees Act, 1870 (VII of 1870), as amended by the Devolution Act, 1920 (XXXVIII of 1920), and in supersession of all previous notifications under the said section, the Governor in Council is pleased to make the following reductions and remissions in the fees chargeable under the First and Second Schedules of the Act, namely:—

*Note*.—The undermentioned rulings apply to Berar also see Central Provinces Gazette Notification No. 79-292-XI, dated the 22nd February 1922, for Berar.

(1) to direct that if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted, except where otherwise expressly provided by this notification ;

(2) to remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use or is no longer required for use and on applications for renewal of stamped paper which has become spoiled or unfit for use :

(3) to remit the fees chargeable on applications in writing relating exclusively to the purchase of salt which is the property of the Government ;

(4) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil Court or Revenue Officer in such a form that the presiding Judge or Officer, without summoning the defendant, rejects it not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector together with a certificate from the Judge or Officer who rejected the plaint that it was rejected under the circumstances above described and that the value of the stamp should, in his opinion, be refunded ;

(5) to remit the fees chargeable on—

- (a) copies of village settlement-records furnished to land-holders and cultivators during the currency or at the termination of settlement operations,
- (b) lists of fields extracted from village settlement-records for the purpose of being filed with petitions to Settlement Officers :

Provided that nothing in this clause shall apply to copies of judicial proceedings, or to copies of village settlement records (other than lists of fields) extracted as aforesaid, which may be in any court or office ;

(6) to direct that the fee chargeable on appeals from orders under section 47 of the Code of Civil Procedure, 1908 (Act V of 1908), shall be limited to the amounts chargeable under article 11 of the Second Schedule ;

(7) to remit the fees chargeable on security-bonds for the keeping of the peace by, or good behaviour of, persons other than the executants ;

(8) to remit the fee payable under article 1, clause (c) of the Second Schedule on an application or petition presented to the Local Government, when the application or petition is accompanied by a

petition to the Government of India and contains merely a request that the petition may be forwarded to the Government of India ;

(9) to remit the fees chargeable under articles 6, 7 and 9 of the First Schedule on copies furnished by Civil or Criminal Courts or Revenue Officers for the private use of persons applying for them ;

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer ;

(10) to remit the fees chargeable, under paragraph 4 of clause (a) and paragraph 2 of clause (b) of article 1 of the Second Schedule on application for orders for the payment of deposits in cases in which the deposit does not exceed Rs. 25 in amount ;

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application ;

(11) to remit, with reference to clause xi of section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently when made by persons who do not at the time of application hold the land ;

(12) to remit the fees chargeable on applications for loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884) ;

(13) to remit the fees chargeable on applications presented to officers of Land Revenue for the suspension or remission of loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884) ;

(14) to remit the fee chargeable on an application made by a person to the Collector under sub-section 2 of section 42 of the Indian Stamp Act, 1899 (II of 1899) for the return to that person, or to the Registration officer who impounded it, of a document impounded and sent to the Collector by a Registration officer ;

(15) to remit the fees chargeable on the following documents, namely :—

- (a) copy of a charge framed under section 210 of the Code of Criminal Procedure, 1898 (V of 1898) or of a translation thereof, when the copy is given to an accused person.
- (b) copy of the evidence of supplementary witnesses after commitment when the copy is given under section 219 of the said Code to an accused person.
- (c) copy or translation of a judgment in a case other than a summons case and copy of the heads of the Judge's charge to the jury, when the copy or translation is given under section 371 of the said Code to an accused person.
- (d) copy or translation of the judgment in a summons case when the accused person to whom the copy or translation is given under section 371 of the said Code is in jail.

- (e) copy of an order of maintenance, when the copy is given under section 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid.
  - (f) copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury or of any order, deposition or other part of the record when the copy is not a copy which may be granted under any of the preceding sub-clause without the payment of a fee, but is a copy which, on its being applied for under section 543 of the said Code, the Judge or Magistrate for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment,
  - (g) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court,
  - (h) Copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation, for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any criminal proceedings.
  - (i) copies of judgments or depositions required by officers of the Police-Department in the course of their duties;
- (16) to direct that the fee chargeable on an application to a Collector with respect either to liability to assessment or to the amount or rate of an assessment under the Indian Income-tax Act, 1918 (VII of 1918) shall be limited to one anna;
- (17) to remit the fee chargeable on an application to a Collector for exemption, refund or abatement of income-tax under the Indian Income-tax Act, 1918 (VII of 1918);
- (18) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office;
- (19) to direct that, when a part of an estate paying annual revenue to the Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject matter of a suit for the possession of, or to enforce a right of pre-emption in respect of a fractional share of that part shall, for the purposes of the computation of the amount of the fee chargeable in the suit, be deemed not to exceed five times such portion of the revenue separately assessed on that part as may be rateably payable in respect of the share;
- (20) to remit the fee chargeable on an application for the grant of a license for the vend of stamps;
- (21) to direct that no court-fee shall be charged on an application for the re-payment of a fine or of any portion of a fine the refund of which has been ordered by competent authority;
- (22) to remit the fees chargeable on applications for copies of documents detailed in clauses 4 and 13, *supra*\*;

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\* See clauses 5 and 15.



(23) to remit the duty chargeable in respect of Indian Probates, Letters of Administration or Succession Certificates on the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1913 (VII of 1913), provided that the said share or interest was registered in a branch register in the United Kingdom under the Indian Companies (Branch Registers), Act, 1900 (IV of 1900), and that such member was at the date of his decease domiciled elsewhere than in India;

(24) to remit the fees chargeable on applications presented to officers of land revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed;

(25) to remit the fee chargeable on applications and petitions presented to a Collector or any revenue officer having jurisdiction equal or subordinate to a Collector for advice or assistance from the Agricultural Department of the Province;

(26) (a) to remit the fees payable under Schedule II upon applications for the grant or renewal of licences or duplicates under the India Arms Rules, 1920, in respect of which a fee is payable under those Rules, and

(b) to reduce to one anna all fees exceeding one anna payable under Schedule II upon other applications relating to licences or duplicates granted or renewed under the said rules;

(27) to remit the fees chargeable on applications to the grant of licences of the nature mentioned in items 8 and 9 of Schedule II appended to the Explosives Rules 1914, to possess gun-powder, other explosives or detonators required *bona fide* for blasting purposes;

(28) to remit as follows the fees on the property of any person subject to military law either under the Army Act (44 and 45 Vict. C. 58) or under the Indian Army Act, 1911 (VIII of 1911), who is killed while on active service or on service which is of a warlike nature or involves the same risk as active service or dies from wounds inflicted, accident occurring or diseases contracted while on such service:—

(a) where the amount or value of property in respect of which the grant of probate or letters of administration is made or which is specified in the certificate under the Succession Certificate Act, 1899 (VII of 1899), does not exceed Rs. 50,000 to remit the whole of the fees leviable in respect of that property;

(b) where the said amount or value exceeds Rs. 50,000 to remit the whole of the said fees in respect of the first Rs. 50,000; and

(c) where any property passes more than once in consequence of such deaths to remit in the case of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property;

(29) to remit the fees chargeable on applications for mutations of names in respect of the property of any person subject to military law either under the Army Act (44 and 45 Vict., C. 58), or under the Indian Army Act, 1911 (VIII of 1911), who is killed, or dies of wounds

inflicted, accident occurring or disease contracted within twelve months before death while on active service in the present war.

(30) to remit the fees chargeable on applications for the grant of licences issued in accordance with the provisions of any rule made under section 9 of the Indian Petroleum Act, 1889 (VIII of 1889) for the possession of dangerous petroleum for use on motor vehicles and for its transport thereon for the purpose of use therein ;

(31) to remit the fees chargeable on copies of decrees of Civil or Revenue courts situate in the territories of His Highness the Gaekwar of Baroda forwarded to any court in the Central Provinces for execution in pursuance of the provisions of section 44 of the Civil Procedure Code, 1908 (V of 1908) ;

(32) to remit the fees chargeable on applications presented to courts with reference to Rule 2, Order XXI, First Schedule, Code of Civil Procedure, 1908 (Act V of 1908), in relation to awards made in the course of conciliation proceedings held with the sanction of the Local Government ;

(33) to remit the fee chargeable on copies of documents furnished by a District Magistrate, a Sessions Judge or the Registrar of the Judicial Commissioner's Court, to a counsel engaged by Government to appear in defence of a pauper accused.

(34) to remit the fees chargeable on petitions of appeal or revision presented in person or sent by post by dismissed municipal servants in accordance with rules made under section 25 (7) of the Central Provinces Municipalities Act, 1922.

(35) to remit the fees chargeable on petitions of appeal or revision presented in person or sent by post by dismissed District Council servants in accordance with rules made under section 79 of the Central Provinces Local Self-Government Act, 1927.

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G—MADRAS.

*Fort St. George, September 10, 1921.*

(Published at pages 1008-1011 of Fort St. George Gazette. Part I  
dated, 11-10-1921)

No. 358.—Under section 35 of the Court-fees Act, 1870 (VII of 1870, as amended by section 4 of Act XXXVIII of 1920 and in supersession of all previous notifications on the subject, it is hereby notified that, in exercise of the power to reduce or remit, in the Presidency of Fort St. George, all or any of the fees mentioned in the First and Second Schedules to the said Act, the Governor in Council has been pleased to make the reductions and remissions hereinafter set forth, namely :

(1) To remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for tamped paper which has become spoiled or unfit for use, or is no

longer required for use, and on applications for renewal of stamped paper which has become spoiled or unfit for use :

(2) to remit the fees chargeable on applications in writing, relating exclusively to the purchase of salt which is the property of the Government ;

(3) (a) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or officer, without summoning the defendant, rejects it not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the court is situated, together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described, and that the value of the stamp should, in his opinion, be refunded ;

<sup>1</sup> (b) to remit the fees now chargeable under article 1 (d) (ii) of Schedule II of Madras Court-fees (Amendment) Act, 1922 (V of 1922), on applications or petitions presented to the High Court for refund of court-fees paid under a mistake or by misdirection.

(4) to remit the fees chargeable on

(a) copies of village settlement records furnished to land holders and cultivators during the currency or at the termination of settlement operations ;

(b) lists of fields extracted from village settlement records for the purpose of being filed with petitions of plaint in settlement courts :

Provided that nothing in this clause shall apply to copies of judicial proceedings, or to copies of village settlement records (other than lists of fields) extracted as aforesaid, which may be filed in any court or office ;

(5) to direct that the fee chargeable on appeals from orders under section 47 of the Code of Civil Procedure, 1908 (Act V of 1908) shall be limited to the amounts chargeable under article 11 of the Second Schedule ;

(6) to remit the fees chargeable on security-bonds for the keeping of the peace by, or good behaviour of, persons other than the executants ;

(7) to remit the fees chargeable under articles 6, 7 and 9 of the First Schedule on copies furnished by Civil or Criminal Courts of

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<sup>1</sup> Notification No. 34 Law (General), dated 5-1-1927. (Fort St. George Gazette, Pt. I, p. 110.)

Revenue Courts or Offices for the private use of persons applying for them :

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of justice or received by any public officer ;

(8) to remit the fees chargeable, under paragraph 4 of clause (a) and paragraph 2 of clause (b) of article 1 of the Second Schedule, on applications for orders for the payment of deposits in cases in which the deposit does not exceed Rs. 25 in amount :

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application ;

(9) to remit, with reference to clause (xi) of section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently, when made by persons who do not at the time of application hold the land ;

(10) to remit the fee chargeable on applications for loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884) ;

(11) to remit the fee chargeable on an application made by a person to the Collector under sub-section (2) of section 42 of the Indian Stamp Act, 1899 (II of 1899), for the return to that person, or to the Registration officer who impounded it, of a document impounded and sent to the Collector by a Registration officer ;

(12) to remit the fees chargeable on the following documents, namely :—

- (a) copy of a charge framed under section 210 of the Code of Criminal Procedure, 1898 (V of 1898), or of translation thereof, when the copy is given to an accused person,
- (b) copy of the evidence of supplementary witnesses after commitment when the copy is given under section 219 of the said Code to an accused person,
- (c) copy or translation of a judgment in a case other than a summons case, and copy of the heads of the Judge's charge to the jury when the copy or translation is given under section 371 of the said Code to an accused person,
- (d) copy or translation of the judgment in a summons case, when the accused person to whom the copy or translation is given under section 371 of the said Code is in jail,
- (e) copy of an order of maintenance, when the copy is given under section 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid,

- (f) copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury or of any order, deposition or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is a copy which on its being applied for under section 548 of the said Code, the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment.
- (g) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court,
- (h) copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation, for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any criminal proceedings,
- (i) copies of judgments or depositions required by officers of the Police Department in the course of their duties ;
- (13) to remit the fee chargeable on an application to a Collector for exemption, refund or abatement of income tax ;
- (14) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office ;<sup>1</sup>
- (15) to direct that when a part of an estate paying annual revenue to the Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter of a suit for the possession of, or to enforce a right of pre-emption in respect of, a fractional

<sup>1</sup> O. 13, R. 9, C. P. C. provides that a person who has produced a document *shall be entitled to receive* back the same after the disposal of the suit and appeal while the proviso to the rule enacts that a document *may* be returned earlier on production of a certified copy and on undertaking to produce the original when required. In the former case, the return of document is only a ministerial act of a routine nature while in the latter case, it is a judicial act, the order having to be made by court on a verified petition setting out all facts, after notice to the other side, with all the formalities of a judicial order and with the power to make provision for costs incidental to the application (Vide sub-rule 3 Mad.). The revision notification was probably intended to be applicable only to applications for return of documents in the former case but the language of the rule is wide so as to cover all applications for return of documents. In view of this wide language of the rule, it is doubtful whether the present practice of charging court-fee on applications for return of documents during the pendency of the suit or appeal is correct.

share of that part shall, for the purposes of the computation of the amount of the fee chargeable in the suit, be deemed not to exceed ten<sup>1</sup> times such portion of the revenue separately assessed on that part as may be rateably payable in respect of the share;

(16) to direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted except where otherwise expressly provided by this notification;

(17) to remit the fee chargeable on an application for the grant of a licence for the vend of stamp;

(18) to direct that no court-fee shall be charged on an application for the repayment of a fine or of any portion of a fine the refund of which has been ordered by competent authority;

(19) to remit the fees chargeable on applications for copies of documents detailed in clauses 4 and 12, *supra*;

(20) to remit the duty chargeable in respect of Indian Probates, Letters of Administration or Succession Certificates on the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1913 (VII of 1913), provided that the said share of interest was registered in a branch register in the United Kingdom under the Indian Companies (Branch Registers) Act, 1900 (VI of 1900), and that such member was at the date of his decease domiciled elsewhere than in India;

(21) to remit the fees chargeable on applications presented to officers of land revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed;

(22) to remit the fee chargeable on applications and petitions presented to a Collector or any Revenue officer having jurisdiction equal or subordinate to a Collector for advice or assistance from the Agricultural Department of the Province;

(23) (a) to remit the fees payable under Schedule II upon applications for the grant or renewal of licences or duplicates under the Indian Arms Rules, 1924,<sup>2</sup> in respect of which a fee is payable under those Rules,

(b) to reduce to one anna all fees exceeding one anna payable under Schedule II upon other applications relating to licences or duplicates granted or renewed under the said rules,

<sup>3</sup> (c) to reduce to Rs. 15 the fees chargeable under Schedule II on a memorandum of appeal in a suit of the classes mentioned in article 17-A or 17-B and instituted in the court of a district munsif,

<sup>1</sup> The word "ten" was substituted for the word "five" by Notification No. 421 Law (General) dated 1-9-1932. Fort St. George Gazette, Part I, p. 896.

<sup>2</sup> Notification No. 508 Law (General), dated 6-8-1924—Fort St. George Gazette, Part I, p. 1372.

<sup>3</sup> Added by Notification No. 607 Law (General), dated 8-12-1922. *Vide* Fort St. George Gazette, Part I, p. 596.

- <sup>1</sup>(d) to remit the fee payable under article 10 of Schedule II by Advocates on memorandum of appearance filed by them when appearing for the accused in Criminal cases,
- <sup>2</sup>(e) to reduce to Rs 15 the fees chargeable under Schedule II on a memorandum of second appeal in a suit of the class mentioned in article 17-B or instituted in a revenue Court, and
- <sup>3</sup>(f) to remit the fee chargeable under article 10 of Schedule II of the Madras Court-Fees (Amendment) Act, 1922 (Madras Act V of 1922) in respect of a vakalatnama or any paper signed by an Advocate signifying or intimating that he is retained for a party, when presented to any Criminal Court for the conduct of any prosecution on behalf of a Municipal Council to which the Madras District Municipalities Act, 1920 (Madras Act V of 1920) applies or on behalf of the Corporation of Madras or a Local Board to which the Madras Local Boards Act, 1920 (Madras Act XIV of 1920) applies;
- (24) to remit the fees chargeable on applications for the grant of licenses of the nature mentioned in items 8 and 9 of Schedule II appended to the Indian Explosives Rules, 1914, to possess gunpowder, other explosives or detonators required *bona fide* for blasting purposes;
- (25) to remit the fees chargeable on applications presented to officers of Land Revenue for the suspension or remission of loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884);
- (26) to remit the fees chargeable on applications for the grant of licenses issued in accordance with the provisions of any rule made under section 9 of the Indian Petroleum Act, 1899 (VIII of 1899), for the possession of dangerous petroleum for use on motor-vehicles and for its transport thereon for the purpose of use therein;
- (27) to remit the fees chargeable on copies of decrees of civil or revenue courts situate in the territories of His Highness the Gaekwar of Boarda forwarded to any court in the Presidency of Fort St. George for execution in pursuance of the provisions of section 44 of the Civil Procedure Code, 1908 (V of 1908);
- (28) to direct that the fees chargeable on the following documents filed in claims preferred under the Madras Hereditary Village Offices Act, 1895 (Madras Act III of 1895), shall be limited to the sum specified below against each, namely :—

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1 Added by Notification No 20 Law (General), dated 23-3-1925. Fort St. George Gazette, Part I, p. 596.

2 Inserted by Notification No. 296 Law (General), dated 15-4-1926. Fort St. George Gazette, Part I, p. 786.

3 Added by Notification No. 67 Law (General), dated 25-1-1927. Fort St. George Gazette, Part I, p. 210.

plaint,<sup>1</sup> [written statement containing a counter-claim] petition for execution or memorandum of appeal to a Collector—eight annas ;

memorandum of appeal to the Board of Revenue—two rupees ;

(29) to remit the fees chargeable (a) on copies of judgment, decrees or orders passed on claims preferred under the Madras Hereditary Village Offices Act, 1895 (Madras Act III of 1895), and (b) on applications filed by either party in the course of the trial of suits or appeals or in the course of execution of decrees under the said Act ;

(30) to reduce the fees chargeable in suits by Government ryots, for the recovery of land sold for arrears of revenue, to the amount which would be chargeable if the value of the subject-matter were only the rent of the land payable for the year next before the date of presentation of the plaint ;

(31) to remit the fees chargeable on applications made by toddy drawers and shop-keepers for the grant of licences permitting them or their servants to draw toddy from cocoanut and other palms ;

(32) to remit the fees chargeable on all communications made under Chapter II of the Madras Proprietary Estates Village Service Act, 1894 (Madras Act II of 1894), by a proprietor to any Revenue Officer relating to the appointment and control of village officers ;

(33) to remit the fees chargeable on the following applications made by cultivators of the hemp plant (*Cannabis Sativa* or *Indica*) in the Madras Presidency :—

(1) Application for a licence to cultivate the hemp plant (*Cannabis Sativa* or *Indica*) ;

(2) Application for permission to harvest a crop of hemp plant and manufacture intoxicating drugs therefrom ; and

(3) Application for a permit to transport intoxicating drugs extracted from the hemp plant ;

(34) to remit the fee chargeable on applications made by distillers and warehouse keepers in the Madras Presidency to the Excise officer in charge of the distillery or warehouse for the issue of a permit for the transport of country spirit ;

(35) to remit the fees chargeable in respect of plaints in suits institute<sup>1</sup> before the Collector under sections 55, 56, 95, 112, 144 and 169 of the Madras Estates Land Act, 1908 (Madras Act I of 1908), and in respect of objection petitions presented to the revenue officer under section 166 (1) of the same Act ;

(36) to remit the fees chargeable on applications, petitions and copies which are filed, exhibited or recorded in, or received or furnish-

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<sup>1</sup> These words were inserted by G. O. No. 3224 Law (General) dated 13-11-1934.



ed by village <sup>1</sup> courts and plaints and complaints filed and information laid in Panchayat Courts constituted under the Madras Village Courts Act, 1889 (Madras Act I of 1889), as amended by Madras Act II of 1920 ;

(37) to remit the fees chargeable on applications for transfer of registry in the revenue accounts in respect of ryotwari holdings in the Madras Presidency ;

(38) to remit the fees chargeable on applications, for transfer of registry in the land records of house-sites in towns in the Madras Presidency ;

(39) to reduce the fee now chargeable under article 1 of Schedule I of the Madras Court Fees (Amendment) Act, 1922 (V of 1922), in respect of a plaint, or written statement pleading a set off or counter-claim presented to a Court outside the Presidency Town in any suit filed as a small cause suit, when the amount or value of the subject-matter exceeds Rs. 500, but does not exceed Rs. 1,000 to twelve annas for every ten rupees or part thereof of such amount or value : Provided that the full fee shall become payable if, for any reason, the suit cannot be tried as a small cause suit ;

<sup>2</sup> (40) to remit the fees chargeable under article 1 of Schedule II of the Court-Fees Act, 1870 (VII of 1870) as amended by the Madras Court-Fees (Amendment) Act, 1922 (Madras Act V of 1922) in respect of applications to which the first paragraph of the said article applies made by consular officers in pursuance of their official functions to officers of the Customs Department.

<sup>3</sup> (41) to remit the fee chargeable—

(a) under article 1 (a) of the Schedule II, in respect of any application by a Government servant for the copy of any order of punishment imposed on him, where there is a statutory right of appeal from such order ; and

(b) under article 11 of the same schedule, in respect of a memorandum of appeal preferred by a Government servant in pursuance of a statutory right of appeal, against any order of punishment imposed on him ;

<sup>4</sup> (42) to remit the fee chargeable under article 1 (b) of Schedule II to the Court-Fees Act, 1870 (VII of 1870), as amended by the Madras Court-Fees (Amendment) Act, 1922 (Madras Act V of 1922), in respect of applications in writing to which the said article applies, made under sub-section (2) of section 4 of the Agency Tracts Interest and Land Transfer Act, 1917 (Madras Act I of 1917).

<sup>1</sup> Amended and added by Notification Nos. 61 Law General, dated 5-1-1922 and 421 Law General, dated 17 7 1923 published in the Fort St. George Gazette, Part I, pp. 98 and 99 and p. 761 respectively.

<sup>2</sup> Notification No. 809 Law (General), dated 22 10-1928, Fort St. George Gazette, Part I, p. 1702-G. O. No. 3537 Law (General), dated 22-10-1928

<sup>3</sup> No. 41 was added by G. O. No. 3634 Law (General), dated 4-10-1932,

<sup>5</sup> No. 42 was added by G. O. No. 2622, Law (General) dated 14-9-1934.

<sup>1</sup> (43) to remit the fee chargeable under Article 1 (b) of Schedule II of the Court-Fees Act, 1870 (VII of 1870), as amended by the Madras Court-Fees (Amendment) Act, 1922 (Madras Act V of 1922), in respect of applications in writing for passposts and pilgrim passes presented to Magistrates.

No. 359 Law (General) dated 12-9-1921,—Reductions and Remissions :—

(39) (1) \* \* [Superseded by Notification No. 180 dated 20-2-1926, *infra*.]

(2) To remit the fees chargeable on applications for mutations of name in respect of the property of any person subject to military law either under the Army Act (44 and 45 Vict., C. 58) or under the Indian Army Act, 1911 (VII of 1911), who is killed or dies of wounds inflicted, accident occurring or diseases contracted within twelve months before death while on active service in the present war.

<sup>2</sup> No. 180. In exercise of the powers conferred on them by section 35 of the Court-fees Act, 1870 (VII of 1870), as amended by the Devolution Act, 1920 (XXXVIII of 1920), and the Madras Court Fees (Amendment) Act, 1922 (Madras Act V of 1922), and in super-session of paragraph 1 of Part II of Notification No. 359, Law (General) dated 12th September 1921, published at page 1011 of Part I of the Fort St. George Gazette, dated 11th October 1921, the Local Governments are pleased to make, in the Presidency of Madras, the remissions hereinafter set forth in the fees leviable under articles 11 and 12 of the First Schedule to the said Act on the property of—

(1) Any person subject to the Naval Discipline Act (29 and 30 Vict., C. 109), the Army Act (44 and 45 Vict., C. 58), the Air Force Act (7 and 8 Geo. 5, C. 51) or the Indian Army Act, 1911 (VII of 1911), who is killed or dies from wounds inflicted, accidents occurring or diseases contracted while on active service or on service which is of a warlike nature or involves the same risk as active service, and

(2) any person being a Government servant, civil or military, who dies from wounds inflicted while in actual performance of his official duties or in consequence of those duties,

#### *Remissions.*

- (a) when the amount or value of the property, in respect of which the grant of probate or letters of administration is made, or which is specified in the certificate under Part X of the Indian Succession Act, 1925, does not exceed Rs. 50,000 the whole of the fees leviable in respect of that property ;

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1 This was added by G. O. No. 3241, Law (General) dated 14-10-1935.

2 The above is Notification No 180 Law (General), dated 20-2-1926. Fort St. George Gazette, Part I, pp. 400 and 401 (G. O. No. 572 Law (General) dated 20-2-1926.)

- (b) where the said amount or value exceeds Rs. 50,000 the whole of the said fees in respect of the first Rs. 50,000.

#### NOTIFICATION.

(5th September 1932.)

<sup>1</sup> Under section 35 of the Court-Fees Act, 1870 (VII of 1870) as amended by the Devolution Act, 1920 (XXXVIII of 1920), and the Madras Court-Fees (Amendment) Act, 1922 (Madras Act V of 1922), the Governor in Council is hereby pleased to reduce to fifteen rupees the fees mentioned in Articles 17-A and 17-B of Schedule II to the first-mentioned Act as so amended, in respect of—

- (i) a plaint in any suit the value whereof for purposes of jurisdiction does not exceed three thousand rupees, which is instituted in the Court of the Subordinate Judge of Cochin; and
- (ii) a memorandum of first and second appeal in any such suit.

#### H—THE PUNJAB.

The following notification issued by the Punjab Government under the Court-fees Act, reducing and remitting fees, is published for information and guidance:—

*The 21th March 1922.*

No. 10495.—Under section 35 of the Court-fees Act, 1870 as modified by the Devolution Act, 1920, and in supersession of all previous notifications under that section, it is hereby notified that in exercise of the power to reduce or remit in the territories administered by the Governor of the Punjab all or any of the fees mentioned in the First and Second Schedules to the said Act, the Governor of the Punjab has been pleased to make the reductions and remissions hereinafter set forth, namely—

- (1) To remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use, or is no longer required for use and on applications for renewal of stamped paper which has become spoiled or unfit for use.
- (2) To remit the fees chargeable on applications in writing relating exclusively to the purchase or sale which is the property of the Government.
- (3) To direct that, when a plaint declaring a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or Officer without summoning the defendant rejects it, not for any substantial defect but on account of an entirely

<sup>1</sup> This Notification was issued by G. O. No. 3279 Law (General) dated 5-9-1932 as amended by G. O. No. 186, Law (General) dated 18-1-1933.

technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the District in which the Court is situated, together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described and that the value of the stamp should, in his opinion, be refunded.

(4) To remit the fees chargeable on—

- (a) copies of village settlement-records furnished to laud-holders and cultivators during the currency or at the termination of settlement operations,
- (b) lists of fields extracted from village settlement records for the purpose of being filed with petitions of plaint in Settlement Courts :

Provided that nothing in this clause shall apply to copies of judicial proceedings, or to copies of village settlement records (other than lists of fields) extracted as aforesaid, which may be filed in any Court or office.

(5) To direct that the fee chargeable on appeals from orders under section 47 of the Code of Civil Procedure, 1908, shall be limited to the amount chargeable under article 11 of the Second Schedule.

(6) To remit the fees chargeable on security bonds for the keeping of the peace by, or good behaviour of, persons other than the executants.

(7) To remit the fee payable under article 1, clause (c), of the Second Schedule on an application or petition presented to a Chief Revenue or Executive authority, or to any Chief Officer charged with the executive administration of a Division, when the application or petition is accompanied by a petition to the Government of India and contains merely a request that that petition may be forwarded to the Government of India.

(8) To remit the fees chargeable under articles 6, 7 and 9 of the First Schedule on copies furnished by Civil or Criminal Courts or Revenue Courts or offices for the private use of persons applying for them :

Provided that nothing in the clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by and public officer.

(9) To remit the fees chargeable under paragraph 4 of clause (a) and paragraph 2 of clause (b) of article 1 of the Second Schedule on applications for orders for the payment of deposits in case in which the deposit does not exceed Rs. 25 in amount :

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application.

(10) To remit, with reference to clause (xi) of section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently, when made by persons who do not at the time of application hold the land.

(11) To remit the fees chargeable on applications for loans under the Land Improvement Loans Act, 1883 (XIX of 1883) or the Agriculturists' Loans Act, 1884 (XII of 1884).

(12) To remit the fees chargeable on applications presented to officers of Land Revenue for the suspension or remission of loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884).

(13) To remit the fee chargeable on an application made by a person to the Collector under sub-section 2 of section 42 of the Indian Stamp Act, 1899 (II of 1899), for the return to that person, or to the Registration Officer who impounded it, of a document impounded and sent to the Collector by a Registration Officer.

(14) To remit the fees chargeable on the following documents, namely:—

- (a) Copy of the charge framed under section 210 of the Code of Criminal Procedure, 1898, or of a translation thereof, when the copy is given to an accused person.
- (b) Copy of the evidence of supplementary witnesses after commitment when the copy is given under section 219 of the said Code to an accused person.
- (c) Copy or translation of a judgment in a case other than a summons case and a copy of the heads of the Judge's charge to the jury, when the copy or translation is given under section 371 of the said Code to an accused person.
- (d) Copy or translation of the judgment in a summons case, when the accused person to whom the copy is given under section 371 of the said Code is in jail.
- (e) Copy of an order of maintenance, when the copy is given under section 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid.
- (f) Copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury or of any order, deposition or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is a copy which on its being applied for under section 548 of the said Code, the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment.
- (g) Copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court,

(h) Copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation for the use of any Court or Magistrate or may consider necessary for the purpose of advising the Government in connection with any criminal proceedings.

(i) Copies of judgments or depositions required by officers of the Police Department in the course of their duties,

(15) To direct that the fee chargeable on an application to a Collector, with respect either to liability to assessment or to the amount or rate of an assessment or for a refund of income-tax under the Indian Income-tax Act, 1918, shall be remitted to one anna.

(16) To remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office.

(17) To direct that, when a part of an estate paying annual revenue to the Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter of a suit for the possession of, or to enforce a right of pre-emption in respect of, a fractional share of that part shall, for the purposes of the computation of the amount of the fee chargeable in the suit, be deemed not to exceed five times such portion of the revenue separately assessed on the part as may be rateably payable in respect of the share.

(18) To direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted, except where otherwise expressly provided by this notification.

(19) To remit the fee chargeable on an application for the grant of a licence for the vend of stamp.

(20) To direct that no court-fee shall be charged on an application for the re-payment of a fine or of any portion of a fine the refund of which has been ordered by competent authority.

(21) To remit the fees chargeable on application for copies of documents detailed in clauses 4 and 13, *supra*.\*

(22) To remit the duty chargeable in respect of Indian Probates, Letters of Administration or Succession Certificates on the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1913 (VII of 1913); provided that the said share or interest was registered in a branch register in the United Kingdom under the Indian Companies (Branch Registers) Act, 1900 (IV of 1900), and that such member was at the date of his decease domiciled elsewhere than in India;

(23) To remit the fees chargeable on applications presented to officers of land revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed.

(24) To remit the fee chargeable on applications and petitions presented to a Collector or any Revenue Officer having jurisdiction

equal or subordinate to a Collector for advice or assistance from the Agricultural Department of the province.

(25) To remit the fee chargeable on applications for the grant of licenses issued in accordance with the provisions of any rule made under section 9 of the Indian Petroleum Act, 1899 (VIII of 1899), for the possession of dangerous petroleum for use on motor vehicles and for its transport thereon for the purpose of use therein.

(26) (a) To remit the fees payable under Schedule II upon applications for the grant or renewal of licenses or duplicates under the Indian Arms Rules, 1920, in respect of which a fee is payable under those Rules, and

(b) To reduce to one anna all fees exceeding one anna payable under Schedule II upon other applications relating to licenses or duplicates granted or renewed under the said rules ;

(27) To remit the fees chargeable on applications for the grant of licenses of the nature mentioned in items 8 and 9 of Schedule II appended to the Indian Explosives Rules, 1914, to possess gunpowder, other explosives or detonators required *bona fide* for blasting purposes.

(28) To remit as follows the fees on the property of any person subject to military law either under the Army Act (44 and 45 Vict., C. 58), or under the Indian Army Act, 1911 (VIII of 1911) who is killed or dies of wounds inflicted, accident occurring or diseases contracted within three years before death while on active service in the war of 1914-19 :—

(a) where the amount of or value of property in respect of which the grant of probate or letters of administration is made or which is specified in the certificate under the Succession Certificate Act, 1889, or in the certificate under Bombay Regulation 8 of 1827 does not exceed Rs. 50,000 to remit the whole of the fees leviable in respect that property ;

(b) where the said amount or value exceeds Rs. 50,000 to remit the whole of the said fees in respect of the first Rs. 50,000 ; and

(c) where any property passes more than once in consequences of such death to remit in the case of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property.

(29) To remit the fees chargeable on applications for mutations of names in respect of the property of any person subject to military law either under the Army Act (44 and 45 Vict., C. 58) or under the Indian Army Act 1911 (VIII of 1911), who is killed, or dies of wounds inflicted, accident occurring or disease contracted within twelve months before death while on active service in the war of 1914-19.

(30) To remit the fees chargeable on copies of decrees of Civil or Revenue Courts situate in the territories of His Highness the

Gaekwar of Baroda forwarded to any court in British India for execution in pursuance of the provisions of section 44 of the Code of Civil Procedure, 1908 (Act V of 1908).

(31) To remit the fees chargeable on copies of orders or proceedings under section 37 of the Punjab Land Revenue Act, 1887 (XVII of 1887), made or recorded by Collectors or other Revenue-Officers engaged in revising a record of-rights, under a notification published in accordance with section 32 of the said Act :

Provided that the copy if furnished for the purpose of being filed with an application or petition to a Collector or other Revenue officer engaged as aforesaid in revising a record of-rights, or to the Commissioner of the Division, or to the Financial Commissioner, Punjab, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interests therein, is presented previous to the final confirmation of such revision ;

(32) To remit the fees chargeable on applications under section 97 of the Punjab Land Revenue Act, 1887 (XVII of 1887), made by village officers in accordance with the provisions of rule 64 of the rules under that Act published with the Financial Commissioner's Notification No. 142, dated the 9th November 1909.

(33) To remit the fees chargeable on copies of all records maintained under the provisions of Chapter IV of the Punjab Land Revenue Act, 1887 (XVII of 1887), when such copies are exhibited or recorded in any Court of Justice or are received or furnished by any public officer.

(34) To remit the fees chargeable on applications for the grant of fishing licenses prescribed by the rules made by the Government of the Punjab under section 3 of the Punjab Fisheries Act, 1914 (Punjab Act II of 1914).

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#### I—UNITED PROVINCES.

U. P. Government Notification No. 1232/VII—353, dated the 11th October, 1923, (Judicial Civil Department) as amended by subsequent orders.

Under section 35 of the Court-fees Act, 1870 (VII of 1870), as amended by the Devolution Act, No. XXXVIII of 1920, and in supersession of all previous notifications under that section, it is hereby notified that in exercise of the power to reduce or remit in the whole or in any part of the territories under his administration, all or any of the fees mentioned in the first and second schedules to the said Act, the Governor in Council has been pleased in respect of the whole of the territories under his administration to make with effect from 1st November 1923, the reductions and remissions herein-after set forth, namely—



(1) to direct that the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper of value not exceeding Rs. 25, which has become spoiled or unfit for use, or is no longer required for use, and on applications for renewal of stamped paper of not value exceeding Rs. 25 which has become spoiled or unfit for use, shall be limited to two annas;

(2) to remit the fees chargeable on applications in writing, relating exclusively to the purchase of salt which is the property of the Government;

(3) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or officer, without summoning the defendant, rejects it not for any substantial defect but on account of the entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the Court is situated, together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described, and that the value of the stamp should, in his opinion, be refunded;

(4) to direct that the fees chargeable on appeals from orders determining any question under section 47 or section 144 of the Code of Civil Procedure, 1908 (Act V of 1908) and therefore having the force of decrees, shall be subject to a maximum of—

(a) two rupees when the appeal is presented to the District Judge in a civil or revenue case or to the Commissioner of the Division in a revenue case; and

(b) five rupees when the appeal is presented to the High Court of Judicature at Allahabad or the Chief Court of Oudh in a civil or revenue case or to the Board of Revenue in a revenue case.

(5) to direct that the fees chargeable under paragraph 2 of clause (b) or under clause (d) of Article 1 of the second Schedule on applications for orders for the payment of a deposit shall be limited to two annas if the deposit does not exceed Rs. 10; to four annas if the deposit exceeds Rs. 10 but does not exceed Rs. 25; and to eight annas if the deposit exceeds Rs. 25, but does not exceed Rs. 50;

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application;

(6) to remit the fees chargeable on applications for loans under the Agriculturists' Loans Act, 1884 (XII of 1884);

(7) to remit the fee chargeable on application made by a person to the Collector under sub section 2 of section 42 of the Indian Stamp Act, 1899 (II of 1899), for the return to that person or to the Registration officer who impounded it, of a document impounded and sent to the Collector by a Registration officer ;

(8) to remit the fees chargeable on the following documents, namely,—

- (a) copy of a charge framed under section 210 of the Code of Criminal Procedure, 1898 (Act V of 1898), or of a translation thereof, when the copy is given to an accused person,
- (b) copy of the evidence of supplementary witnesses after commitment when the copy is given under section 219 of the said Code to an accused person,
- (c) copy or translation of a judgment in a case other than a summons case, and copy of the heads of the Judge's charge to the jury, when the copy or translation is given under section 371 of the said Code to an accused person,
- (d) copy or translation of the judgment in a summons case, when the copy or translation is given under section 371 of the said Code to an accused person,
- (e) copy of an order of maintenance, when the copy is given under section 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid,
- (f) copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury or of any order, deposition or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is a copy which, on its being applied for under section 548 of the said Code, the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment,
- (g) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court,
- (h) copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation for the use of any Court or Magistrate, or may consider necessary for the purpose of

advising the Government in connection with any criminal proceedings,

- (i) copies of judgments or depositions required by officers of the Police Department in the course of their duties;

(9) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office;

(10) to direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted, except where otherwise expressly provided by this notification ;

(11) to direct that no court-fee shall be charged on an application for the repayment of a fine or of any portion of a fine the refund of which has been ordered by competent authority ;

(12) to remit the fees chargeable on applications for copies of documents detailed in clause 8, *supra* ;

(13) to remit the fees chargeable on applications presented to officers of land-revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed ;

(14) to remit the fee chargeable on applications and petitions presented to a Collector or any Revenue officer having jurisdiction equal or subordinate to a Collector for advice or assistance from the Agricultural Department of the Province ;

(15) to remit as follows the fees leviable under articles 11 and 12 of the First Schedule on the property of

- (i) any person subject to the Naval Discipline Act (29 and 30 Vict., C. 109), the Army Act (44 and 45 Vict., C. 58), the Air Force Act (Constitution) Act (7 and 8 Geo. 5, C. 51) or the Indian Army Act, 1911 (VII of 1911), who is killed or dies from wounds inflicted, accidents occurring or disease contracted while on active service or on service which is of a warlike nature or involves the same risk as active service and (ii) any person being a Government servant Civil or Military who dies from wounds inflicted
  - (a) while in actual performance of his official duties, or
  - (b) in consequence of duties ;

- (a) where the amount or value of property in respect of which the grant of probate or letters of administration is made or which is specified in the certificate under Part X of the Indian Succession Act, 1925, does not exceed Rs. 50,000, the whole of the fees leviable in respect of that property ; and

- (b) where the said amount or value exceeds Rs. 50,000 the whole of the said fees in respect of the first Rs. 50,000 ;

(16) Cancelled—Vide Notification No. 1299/IX-497, dated 22-3-1932.

(17) to remit the fees chargeable on copies of decrees of Civil Courts situate in the territories of His Highness the Gaekwar of Baroda forwarded to any court in British India for execution in pursuance of the provisions of section 44 of the Civil Procedure Code, 1908 (V of 1908);

(18) to reduce to eight annas the fee chargeable on a copy of any number of entries in a settlement record relating to any one village in the Kumaun division;

(19) (i) to remit the fees payable on all documents filed, exhibited or recorded, in, or furnished by, the court of the Special Judge under the Bundelkhand Encumbered Estates Act, 1903 (U. P. Act I of 1903);

(ii) to remit the fees payable on all documents connected with the proceedings in the Court of the Commissioner under the Act, except the memoranda of appeal and on applications for revision of any decision or order of the Special Judge under Chapter VI thereof;

(iii) to reduce to eight annas the fee payable on any appeal against a decision of the Special Judge under Chapter VI of the Act;

(20) to remit the fees chargeable on notices of claims under section 6, sub-section (c) of the Indian Forest Act, 1878 (VII of 1878) presented to Forest Settlement Officers in the district protected forests of the Kumaun division;

(21) to remit the fees payable on copies of decrees and applications for execution forwarded by Civil Courts to Collectors under rules 2 and 6, Board's Circular 25-II.

(22) to remit the fees chargeable under articles 6, 7 and 9 of the first Schedule on copies furnished by Civil or Criminal Courts or Revenue Courts or officers for the private use of persons applying for them;

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer;

(23) Applications made to a District Magistrate for revision of an order passed by a returning officer, under rule 26 of the rules made under section 172 of the United Provinces District Boards Act, 1922;

(24) to remit all fees payable upon applications relating to matters connected with the ascertainment of rights to land or of interests therein presented to a record officer or an assistant record officer in any district under survey and record operations in the United Provinces;

(25) to remit all fees payable upon

(i) all petitions of appeal filed by Government servants against departmental orders of punishment ; and

(ii) copies of orders against which Government servants appeal, and which they file with their petitions of appeal ;

(26) to remit fee payable under the Court Fees Act, on appeals preferred under s. 128 of the United Provinces District Boards Act, 1922 (Act No X of 1922), against an assessment or an alteration of an assessment of a tax on circumstances and property ;

(27) to remit fees payable under Schedule II of the Court Fees Act upon applications presented under s. 58 (1) of the Agra Tenancy Act, 1926 (United Provinces Act No III of 1926) ;

(28) to remit fees payable under Article 1 (a), Schedule II of the Court Fees Act, 1870, upon any application or petition presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place.

(29) to remit fees payable under the Court Fees Act, 1870, on a complaint made by an officer or a servant of a District Board in his official capacity ;

(30) to remit in the whole of the area comprised in the district of Mirzapore, except the land described in the Schedule to the Mirzapore Stone Mahal Act (Act V of 1886), the fee payable under Article I (b) of the second Schedule to the Court Fees Act, 1870, as amended by the United Provinces Court Fees (Amendment) Act, 1932, upon all applications presented to the Superintendent, Stone Mahal, Mirzapore, or, in his absence, to the treasury or sub-treasury officer at Chunar, for the grant of a license to quarry stone or for transport of stone ;

(31) to remit fees chargeable under Schedule II of the Court Fees Act, 1870 (VII of 1870), upon applications, for the grant or renewal of licenses or duplicates made by the following classes of government servants who require a license but are exempt from licence fees under Schedule VII (7) of the Indian Arms Rules, 1924, in respect of the arms noted against each :

(1) Excise Inspectors . . . . One revolver or pistol.

(2) Patwaris employed in the hill portion  
of the Kumaun division . . . . One short gun.

(3) Forest rangers . . . . One 12 bore gun.

(4) A Sub-inspector of Police who is  
certified by the Deputy Inspector General of  
Police under whom he is serving to require an  
automatic pistol owing to the nature of his  
duties . . . . One automatic pistol.

(32) to direct that, when a part of an estate paying annual revenue to Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter of a suit for the possession of, or to enforce a right of pre-emption in respect of, a fractional share of that part shall, for the purposes of the computation of the amount of the fee payable under the said Act in the suit, be deemed not to exceed six times such portion of the revenue separately assessed on that part as may be rateably payable in respect of the share ;

(33) to direct that in the whole Puranpur Tahsil, district Pilibhit, the fee chargeable on a suit for commutation of rent filed by a tenant or tenants in the Court of the special Roster Officer, will be limited to eight annas, provided that where there are more plaintiffs than one all tenants joining in the suit are tenants of the same landholder and the holdings in respect of which the suit is brought, are situated in the same mahal and village ;

(34) to remit, with effect from April 17, 1934, the fee chargeable on all petitions of objections or memoranda of appeal filed by the Zemindars and tenants to the Courts of Sub-divisional Officers or Collectors concerning the amount of remissions worked out under the Fluctuation Scheme, *i.e.*, the scheme proposed by Government to adjust rent and revenue to major fluctuations in prices. This notification will cease to have effect from September 30, 1934 ;

(35) to direct that court-fee chargeable under Article 1, Schedule I of the Court Fees Act, 1870, on appeals presented to a Collector from orders passed under section 79 of the Agra Tenancy Act, shall be subject to a maximum of Re. 1 ;

(36) to remit that court-fee payable on complaints made by officers or servants of Notified Area Committees and Town Area Committees in their official capacity.

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### APPENDIX III.

## RULES RELATING TO PROCESS AND PROCESS FEES.

### A—ALLAHABAD HIGH COURT.

#### COURT-FEES AND PROCESS FEES.

1. At any District or Subordinate Court, where the District Judge considers it necessary, the central Nazir or Nazir may be charged with the duty of selling impressed paper to applicants for copies. The paper will be supplied from the treasury or sub treasury in quantities of value not less than fifty rupees, in the first instance without payment in ready money, and afterwards upon payment for last supply received. The central Nazir may similarly be charged with the duty of selling court-fee stamps of the value of one, four,

and eight annas and one rupee, which will be supplied from treasuries or sub treasuries in quantities of value not less than fifty rupees. No commission shall be allowed on the sale by a central Nazir or a Nazir of impressed paper or court-fee stamps.

No record of sales of impressed paper need to be kept; but a day-book showing daily receipt and sales of court-fee stamps must be kept in the form prescribed by rule 43.

2. The fees exhibited in the following table shall be charge for serving and executing the several processes against which they are respectively ranged :—

*Table of fees.*

**Part I.**—In the High Court, Appellate Jurisdiction.—

*Article 1.*—Notice of appeal or other notice to respondents, when the respondents are not more than four in number, *one fee*...Rs. 3 0 0

When such respondents are more than four in numbers then the fee abovementioned for the first four, and an additional fee of eight annas for every such person in excess of four: provided that the aggregate amount of the fees levied under this article shall not exceed fifteen rupees.

*Article 2.*—Summons to witnesses when the witnesses are not more than four in number, *one fee* ... .. R. 3 0 0

When such witnesses are more than four in number, then the fee abovementioned for the first four, and an additional fee of eight annas for every such witness in excess of four.

*Article 3.*—Every warrant of arrest in respect of each person to be arrested ... .. Rs. 5 0 0

*Article 4.*—Notice, proclamation, injunction or other order not specified in any preceding article of this part when the copies to be served or posted are not more than four in number, *one fee* Rs. 3 0 0

When such copies are more than four in number, then the fee abovementioned for the first four, and an additional fee of eight annas for every such copy in excess of four: provided that the aggregate amount of the fees levied under this article shall not exceed fifteen rupees.

**Part II.**—<sup>1</sup> In the Courts of District Judges, Subordinate Judges, and Judges of Courts of Small Causes when exercising the powers of a Subordinate Judge conferred under section 31 of Act No. IX of 1887.—

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1 NOTE.—When a District Judge, Subordinate Judge or Judge of a Court of Small Causes invested with the powers of a Subordinate Judge is exercising original jurisdiction in any suit in which the amount and value of the subject-matter does not exceed one thousand rupees, the fees chargeable will be those prescribed in Part III or Part IV as the case may be.

*Article 1.*—Summons to defendants, notice of appeal or other notice to respondents when the defendants or respondents are not more than four in number, *one fee* ... .. Rs. 2 8 0

When such defendants or respondents are more than four in number, then the fee abovementioned for the first four, and an additional fee of ten annas for every such person in excess of four: provided that the aggregate amount of the fees levied under this article shall not exceed twelve rupees eight annas.

*Article 2.*—Summons to witnesses, when the witnesses are not more than four in number, *one fee* ... .. Rs. 2 8 0

When such witnesses are more than four in number, then the fee abovementioned for the first four, and an additional fee of ten annas for every such witness in excess of four.

*Article 3.*—Every order of attachment ... .. Rs. 1 4 0

*Article 4.*—In respect of the services of the officer making an attachment in the manner prescribed in Order XXI, rule 43, 44, 51 or 54 and section 46 of Act No. V of 1908 when property is to be attached in one town or village only, *one fee* ... .. Rs. 9 0 0

When property is to be attached in more than one town or village, then the fee abovementioned for the first town or village specified in the order of attachment, and an additional fee of two rupees for every other town or village: provided that the aggregate amount of the fees levied under this article shall not exceed fifteen rupees.

*Article 5.*—Every warrant of arrest in respect of each person to be arrested ... .. Rs. 3 12 0

*Article 6.* <sup>1</sup>—In respect of the services of each peon in whose custody a judgment debtor is left under Order XXI, rule 40 (3) of Act No. V of 1908 *per diem* ... .. Rs. 0 6 0

*Article 7.* <sup>2</sup>—Every order for the sale of property—

(a) in respect of the order of sale ... .. Rs. 1 4 0

(b) by way of poundage on the full amount of the purchase money—

if the sale be effected through a broker under Order XXI, rule 76, of Act No. V of 1908.	}	The commission payable to the broker and in addition a sum equal to one-quarter of such commission.
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if the sale be conducted by an officer of the Court or by any other person (not being a Collector or a broker) appointed by the Court ... .. 6½ p.c.

1. NOTE.—Fees will be paid under this article in advance for such period as the Court may from time to time direct.

2. NOTE.—The portion (a) of this fee must be paid when the process is obtained, and the poundage (b) at the time and in the manner prescribed in rules 11, 15 and 16,



*Article 8.*—In respect of the services of the officer making delivery of possession of property under Order XXI, rule 31, 35, 36, 95, 96, 98 or 101 of Act No. V of 1908 when property is to be delivered in one town or village only, *one fee* ... .. Rs. 9 0 0

When property is to be delivered in more than one town or village, then the fees abovementioned for the first town or village specified in the warrant of delivery, and an additional fee of two rupees for every other town or village: provided that the aggregate amount of the fees levied under this article shall not exceed fifteen rupees.

*Article 9.*—Notice, proclamation, injunction or other order not specified in any preceding article of this Part, when the copies to be served or posted are not more than four in number *one fee* Rs. 2 8 0

When such copies are more than four in number then the fee abovementioned for the first four and an additional fee of ten annas for every such copy in excess of four; provided that the aggregate amount of the fee levied under this article shall not exceed twelve rupees eight annas.

*Article 10*<sup>1</sup>.—If the service of a process other than a warrant for the arrest of the person, be declared "emergent" as described in chapter III, rule 16 ... .. Rs. 1 4 0

### **Part III.**—(Except in suits specified in Part IV).

In the Courts of Munsifs and in Courts of Small Causes—

*Article 1.*—Summons to defendants, when the defendants are not more than four in number *one fee* ... .. Rs. 1 4 0

When the defendants are more than four in number, then the fee abovementioned for the first four and an additional fee of five annas for every such defendant in excess of four; provided that the aggregate amount of the fees levied under this article shall not exceed six rupees four annas.

*Article 2.*—Summons to witnesses, when the witnesses are not more than four in number, *one fee* ... .. Rs. 1 4 0

When the witnesses are more than four in number, then the fee abovementioned for the first four and an additional fee of five annas for every such witness in excess of four.

*Article 3.*—Every order of attachment ... .. Re. 1 0 0

*Article 4.*—In respect of the services of the officer making an attachment in the manner prescribed in Order XXI, rules 43, 44, 51 and 54 and section 47 of Act No. V of 1908 when the property is to be attached in one town or village only *one fee* ... .. Rs. 4 0 0

When property is to be attached in more than one town or village then the fee abovementioned for the first town or village

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1 NOTE.—This fee will be payable in addition to the ordinary fees specified in article 1, 2 or 9 of this part.

specified in the order of attachment, and an additional fee of one rupee for every other town or village: provided that the aggregate amount of fees levied under this article shall not exceed seven rupees.

*Article 5.*—Every warrant of arrest in respect of each person to be arrested ... .. Rs. 2 8 0

*Article 6*<sup>1</sup>.—Every order for the sale of property—

(a) in respect of the order of sale ... .. Rs. 1 0 0

(b) by way of poundage on the full amount of the purchase money—

if the sale be effected through a broker under Order XXI, rule 76 of Act No. V of 1908.	{	The commission payable to the broker and in addition a sum equal to one-quarter of such commission.

if the sale be conducted by an officer of the Court or by any other person (not being a Collector or a broker) appointed by the Court ... .. 6½ p. c.

*Article 7.*—In respect of the services of the officer making delivery of possession of property under Order XXI, rule 31, 35, 36, 95, 97, 98 or 101 of Act No. V of 1908, when property is to be delivered in one town or village only, *one fee* ... .. Rs. 4 0 0

When property is to be delivered in more than one town or village, then the fee abovementioned for the first town or village specified in the warrant of delivery, and an additional fee of one rupee for every other town or village: provided that the aggregate amount of the fees levied under this article shall not exceed seven rupees.

*Article 8.*—Notice, proclamation, injunction or other order not specified in any preceding article of this part, when the copies to be served or posted are not more than four in number, *one fee* ... .. Rs. 1 4 0

When such copies are more than four in number, then the fee abovementioned for the first four and an additional fee of five annas for every such copy in excess of four: provided that the aggregate amount of the fees levied under this article shall not exceed six rupees eight annas.

*Article 9*<sup>2</sup>.—If the service of a process, other than a warrant for the arrest of the person be declared "emergent" as described in chapter III, rule 16 ... .. Re. 1 0 0

**Part IV.**—In the Courts of Munsifs and in Courts of Small Causes in suits in which the amount or value of the subject-matter in dispute does not exceed Rs. 50.

1 NOTE.—The portion (a) of this fee must be paid when the process is obtained and the poundage (b) at the time and in the manner prescribed in rule 11, 15 or 16.

2 NOTE.—This will be payable in addition to the ordinary fee specified in article 2 or 8 of this part.

*Article 1.*—Summons to defendants, when the defendants are not more than two in number *one fee* ... Re. 0 10 0

When the defendants are more than two in number, then the fee abovementioned for the first two, and an additional fee of three annas for every such defendant in excess of two: provided that the aggregate amount of the fees levied under this article shall not exceed four rupees.

*Article 2.*—Summons to witnesses, in respect of each witness ... Re. 0 5 0

*Article 3.*—Every order of attachment ... Re. 0 10 0

*Article 4.*—In respect of the services of the officer making an attachment in the manner prescribed in Order XXI, rules 43, 44, 51 and 54 and section 46 of Act No. V of 1908 when property is to be attached in one town or village only *one fee* ... Rs. 2 0 0

When property is to be attached in more than one town or village, then the fee abovementioned for the first town or village specified in the order of attachment, and an additional fee of nine annas for every other town or village: provided that the aggregate amount of the fees levied under this article shall not exceed three rupees.

*Article 5.*—Every warrant of arrest in respect of each person to be arrested ... Rs. 1 4 0

*Article 6*<sup>1</sup>.—Every order for the sale of property—

(a) in respect of the order of sale... Re 0 10 0

(b) by way of poundage on the full amount of the purchase money—

if the sale be effected through a broker under Order XXI, rule 76 of Act No. V of 1908.	}	The commission payable to the broker and in addition a sum equal to one- quarter of such commission.
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if the sale be conducted by an officer of the Court or by any other person (not being Collector or a broker) appointed by the Court ... 6½ p. c.

*Article 7.*—In respect of the services of the officer making delivery of possession of property under Order XXI, rule 31, 35, 36, 95, 96, 98 or 101 of Act No. V of 1908, when the property is to be delivered in one town or village only *one fee* ... Rs. 2 0 0

When property is to be delivered in more than one town or village, then the fee abovementioned for the first town or village specified in the warrant of delivery and an additional fee of eight annas for every other town or village; provided that the aggregate amount of fees levied under this article shall not exceed three rupees.

1 NOTE.—The portion (a) of this fee must be paid when the process is obtained, and the poundage, (b) at the time and in the manner prescribed in rule 11, 15 or 16.

*Article 8.*—Notice, proclamation, injunction or other order not specified in any preceding article of this part, when the copies to be served or posted are not more than two, in number *one fee* Rs. 0 10 0

When such copies are more than two in number, then the fee abovementioned for the first two and an additional fee of three annas for every such copy in excess of two: provided that the aggregate amount of the fees levied under this article shall not exceed four rupees.

*Article 9*<sup>1</sup>.—If the service of a process, other than a warrant for the arrest of the person, be declared "emergent" as described in chapter III, rule 16 ... .. Rs. 0 10 0

3. Notwithstanding rule 2, fees for processes in execution of a decree or order for money shall be charged irrespective of the grade of the Court issuing such processes and of the value of the original suit, according to the amount, including interest, if any due, upon the decree or order; that is to say, if such amount exceed Rs. 1,000, fees shall be charged under Part II; if it be less than Rs. 1,000 and more than Rs. 50, they shall be charged under Part III; and if it does not exceed Rs. 50, they should be charged under Part IV.

4. Notwithstanding rule 2, no fee shall be chargeable for serving or executing:—

- (1) any process which may be issued by any Court of its own motion, solely for the purpose of taking cognizance of and punishing any act done or words spoken in contempt of its authority;
- (2) any process issued a second time in consequence of an adjournment made otherwise than at the instance of a party or an intervenor;
- (3) any copy of a warrant, order or certificate posted under Order XXI, rule 36, 54 or 96, of Act No. V of 1908, when the fee chargeable under article 4 or article 8, Part II, or under article 4 or article 7, Parts III and IV has been paid;
- (4) any copy of a summons, notice, order, proclamation or other process, posted in a Court house or in the office of a Collector;
- (5) any notice issued by a District Court under schedule III, paragraph 5 of Act No. V of 1908;
- (6) any order intimating withdrawal of attachment or postponement of sale;
- (7) any order intimating to a sale officer that permission has been given to a decree holder to bid for or purchase property under Order XXI, rule 72, of Act No. V of 1908:

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1 NOTE.—This fee will be payable in addition to the ordinary fee specified in article 1, 2 or 8 of this part.

- (8) any copy of a notice of an application under Act No. VIII of 1890, sent to a Collector under chapter XX, rule 19;
- (9) any order directing an officer in charge of a jail to detain or to release a person committed to his custody.

5. No process which comes within the operation of rule 2, shall be drawn up for service or execution until the fee chargeable under that rule has been paid. The fee shall be paid in Court-fee stamps, which shall be affixed either on the application by which the Court is moved to issue the process, or, if no such application be filed, on the order by which the Court directs the issue or service of the process. If such an application be filed, it shall bear the requisite stamps for the fee in addition to such stamps, if any, as are needed for its own validity.

### B—PATNA HIGH COURT. CIVIL

Rules framed by the High Court under clause (i) of section 20 of the Court-Fees Act, 1870, declaring the fees chargeable for the service and execution of processes issued by the Civil and Revenue Courts.

1. The fees in the following tables shall be charged for serving and executing the several process against which they are respectively ranged :—

NATURE OF PROCESS.	Table of fees.			
	1. In Courts of District Judges. 2. In Courts of Subordinate Judges. 3. In Courts of Munsifs and Revenue Courts where the suit in which process is issued is valued at over Rs. 1,000.	In Courts of Munsifs and of Small Causes and in Revenue Courts where the suit in which process is issued does not exceed Rs. 1,000 and exceeds Rs. 50 in value.	In Courts of Munsifs and of Small Causes and in Revenue Courts where the suit does not exceed Rs. 50 in value.	
1	2	3	4	
Article 1.—In every case in which personal or substituted service of any process on parties to the cause is required, where not more than four persons are to be served with the same document—one fee.	4 8 0	1 8 0	0 12 0	

NATURE OF PROCESS.	Table of fees,			
	1. In Court of District Judges. 2. In Courts of Subordinate Judges. 3. In Courts of Munsifs and Revenue Courts where the suit in which process is issued is valued at over Rs. 1,000.	In Courts of Munsifs and of Small Causes and in Revenue Courts where the suits in which process is issued does not exceed Rs. 1,000 and exceeds Rs. 50 in value.	In Courts of Munsifs and of Small Causes and in Revenue Courts where the suit does not exceed Rs. 50 in value.	
1	2	3	4	
When such persons are more than four in number, then the fee abovementioned and an additional fee as mentioned in the table for every such person in excess of four,	0 12 0	0 6 0	0 6 0	
<i>Article 2.</i> —In every case falling within columns 2 and 3 in which personal or substituted service of any process on any persons who are not parties is required when the number of such persons is not more than four—one fee.	4 8 0	1 8 0	.....	
When there are more than four such persons, then the fees abovementioned for the first four and an additional fee as mentioned in the table for every one in excess of that number.	0 12 0	0 6 0	.....	
In every case falling with column four in respect of a similar process for each person.	.....	.....	0 6 0	
<i>Article 3.</i> —Where process of attachment of property by actual seizure is issued				
(a) for the seizure under the order of attachment;	4 8 0	1 8 0	0 12 0	
(b) for each man necessary to ensure safe custody of property so attached when such man is actually in possession, per diem.	0 9 0	0 6 0	0 6 0	

NATURE OF PROCESS.	Table of fees.			
	1. In Courts of District Judges. 2. In Courts of Subordinate Judges. 3. In Courts of Munsifs and Revenue Courts where the suit in which process is issued is valued at over Rs. 1,000.	In Courts of Munsifs and of Small Causes and in Revenue Courts where the suit in which process is issued does not exceed Rs. 1,000 and exceeds Rs. 50 in value.	In Courts of Munsifs and of Small Causes and in Revenue Courts where the suit does not exceed Rs. 50 in value.	
1	2	3	4	
<i>Article 4.</i> —For the proclamation and publication of any order of prohibition under Order XXI, Rule 54 of the Code of Civil Procedure, irrespective of the number of such proclamations or publications.	4 8 0	1 8 0	1 8 0	
<i>Article 5</i> —For the publication by posting of a copy or copies of the notification of any proceeding or process not specially mentioned in any article, irrespective of the number of such publications	3 0 0	1 8 0	1 8 0	
<i>Article 6.</i> — For executing a decree by the arrest of the person or for executing a warrant of arrest or for executing a warrant of arrest before judgment.	15 0 0	6 0 0	1 8 0	
<i>Article 7.</i> —Where an order for the sale of property other than an order for the sale of distrained property under Act VIII of 1885 is issued—				
(a) for proclaiming the order of sale under Order XXI, rule 66 of the Code of Civil Procedure, a fee of—	3 0 0	1 8 0	1 8 0	
(b) for selling the property, a percentage or poundage on the gross amount realized by the sale up to Rs. 1,000 at the rate of—	2 per cent.	2 per cent.	2 per cent.	
together with a further fee on all excess of gross proceeds beyond Rs 1,000, at the rate of—	1 per cent.	1 per cent.	1 per cent.	
<i>Article 8.</i> —For service of any process not specified in any preceding article.	3 0 0	1 8 0	1 8 0	

*Note.*—(1) When process of attachment mentioned in article 3 is issued in a number of cases relating to the same or neighbouring villages, the fee (a) must be paid in each case, the daily fee (b) only for the men actually employed.

(2) The daily fee (b) is to be deposited with the Cashier as peremptory receipt at the time of obtaining the process for so many days as the Court shall order, not being ordinarily less than fifteen days, and the number of days required for the coming and going of the officer; but where the officer is not to be left in possession, then the daily fee is to be deposited only for the time to be occupied by the officer going, effecting the attachment and returning. When the inventory filed by the judgment-creditor shows the property to be of such small value that the expense of keeping it in custody may probably exceed the value the Court shall fix the daily fee with reference to the provisions of Order XXI, Rule 43 of the Code of Civil Procedure.

Provided that, if it appears that for any reason the number of days fixed by the Court under this note, in respect of which fees have been paid, is likely to be exceeded and the decree-holder desires to maintain the attachment, the decree holder shall apply to the Court to fix such further number of days as may be necessary and the additional fees in respect thereof shall be deposited in advance. If such additional fees be not paid within the period originally fixed and in respect of which fees have been paid, the attachment shall cease on the expiry of that period.

The Nazir will purchase a court-fee stamp of the amount actually incurred in deputing a peon and affix it on the process under the signature of the Presiding officer in payment of the fees. The balance of the deposit, if any, will be available for refund to the party.

*Note 2.*—(1) When a sale of immoveable property mentioned in Article 7 is set aside, under section 47 or under Order XXI, Rule 92 of the Code of Civil Procedure, or under section 174 of the Bengal Tenancy Act (Act VIII of 1885), any poundage or other fee charged for selling the property shall on application, be refunded.

(2) The fee under clause (a) must be paid when the process is obtained.

The percentage of poundage under clause (b) must be paid (1) in the case where the purchaser is a person other than the decree-holder, at the time of making the application for payment of the proceeds of sale out of Court, as provided in rule 4 and (2) in a case where the decree-holder has been permitted to purchase, at the time of the presentation of his application for permission to set off the purchase money against the amount of his decree as provided in rule 5.



(3) The percentage leviable under this article shall be calculated on multiples of Rs. 25 (*i. e.*, a poundage fee of 8 annas should be levied for every Rs. 25 or part of Rs. 25 realized by the sale up to Rs. 1,000 and in the case of the proceeds of the sale exceeding Rs. 1,000 an additional fee of 4 annas for every Rs. 25 or part thereof should be levied).

(4) In cases in which several properties are sold in satisfaction of one decree, only one poundage fee, calculated on the gross sale proceeds should be levied, 2 per cent. being charged on the gross sale proceeds up to Rs. 1,000 and one per cent. on such proceeds exceeding Rs. 1,000.

*Note.*— Fractions of an anna will not be levied, less than six pies being ignored and six pies and over treated as one anna.

2. Notwithstanding the provisions of Rule 1 no fee shall be chargeable for serving and executing any process, such as a notice, rule, summons, a warrant of arrest, which may be issued by any Court of its own motion, solely for the purpose of taking cognizance of and punishing any act done; or words spoken, in contempt of its authority.

3. The fees hereinbefore provided, except those mentioned in the next rule, shall be payable in advance at the time when the petition for service or execution is presented, and shall except where otherwise provided be paid by means of stamps affixed to the petition in addition to the stamps necessary for its own validity.

4. The proceeds of a sale effected in execution of any decree will only be paid out of Court on an application made for that in writing, and the poundage fee for selling the property provided in clause (b) of Article 7 must be paid by stamps affixed to, or impressed upon, the first of such applications, whether it be or be not made by the person who obtained the order for sale, or whether it does or does not extend to the whole of the proceeds. No fee will be chargeable upon any such application subsequent to the first.

5. When a decree-holder happens to be the auction-purchaser his application for an order to set off the purchase money shall in addition to the stamp necessary for its own validity, be stamped with stamps of the value of the poundage fee due for selling the property under clause (b), Article 7.

6. Upon the hearing of such petition, the costs of execution, including the amount of the stamp attached to the petition, shall be ascertained and shall be added to the decree; and in cases in which the amount of the purchase-money exceeds the amount of the decree and of such costs, the decree-holder who has so purchased the property shall pay into Court 25 per cent. of the balance of the purchase-money after deducting the amount of the decree and of such costs, and shall pay the balance at the expiration of fifteen days in accordance with Order XXI, Rule 85 of the Code of Civil Procedure.

7. When in order to the service of any process, a peon has to cross a ferry, the amount, if any, legally eligible as toll shall be paid by the Court executing such process from its special permanent advance sanctioned by the local Government for the purpose.

*Note 1.*—Fractions of an anna will not be levied, less than six pies being ignored and six pies and over being treated as one anna.

*Note. 2.*—This rule will not apply to the district of Purnea and the Madhepura Munsiffi in the district of Bhagalpore or the periods of the year during which additional fees under the next succeeding rule are leviable.

8. Throughout, or in any part of the district of Purnea and the Madhepura Munsiffi in the district of Bhagalpore and for the periods of the year during which travelling except by boat is, in the opinion of the District Judge, impracticable, the fees chargeable for the service of processes shall be increased by 25 per cent. in order to provide for payment of the boat hire or ferry toll rendered necessary by the state of the country. The additional fees may, however, be reduced to 12½ per cent. over the fees ordinarily leviable, at the discretion of the District Judge, in any part of the district where, or at any season of the year when, the levy of the larger amount is found to be unnecessary.

*Note (1).*—Fractions of an anna will not be levied, less than six pies being ignored and six pies and over being treated as one anna.

*Note (1).*—The process servers' boat hire passed under this rule should alone be included under the head of "Process serving charges" under "Special Contingencies" (*vide* Resolution of the Financial Department of the Government of Bengal, dated the 4th August, 1890).

8. In cases in which the process is to be served in the jurisdiction of another Court, the proper fee chargeable under Rule 1 read with Rule 7 shall be levied, in the manner above directed, on the application for the transmission of the process to that Court, and a note shall be made on the process stating that this has been done. A court which receives from another court whether in the same province or not, a process bearing a certificate that the proper fee has been levied, shall cause it to be served without further charge.

*Note (1).*—The fees paid in pursuance of these rules must in all proceedings be deemed and treated as part of the necessary and proper costs of the party who pays them.

*Note (2).*—By arrangement between the Government of India and His Highness the Nizam of Hyderabad, Civil process for service or execution within His Highness' territories will be issued and served in accordance with the above rule.

Processes issued by Civil Courts in His Highness the Nazam's territories will be served or executed in Bihar and Orissa free of charge.

*Note (3):*—Processes issued by Courts in India for service by Colonial Courts must be accompanied by a remittance sufficient to meet the cost of service.

In Mauritius, the cost of service is Rs. 3 per person in town, and to this must be added 75 per cent. mile travelling allowance for service in the country. For processes not accompanied by an English translation and requiring translation in Mauritius, an additional fee of Rs. 10 should be remitted.

*Note. (4):*—By arrangement between the Government of India and the Chiefs of the Feudatory States named in the Schedule below, civil processes for service or execution within the territories of those states will be issued and served in accordance with the above rule.

Processes issued by the Civil Courts within those territories of these states will be served or executed in Bihar and Orissa free of charge in accordance with the rule above.

#### SCHEDULE.

Baster	Raigarh	Korea
Nandgaon	Sarangarh	Changlohakot
Nandgaon	Udaipur	Makrat
Khairagarh	Jashpur	Chhui Khadan
Kawardha	Sirguja	Sakti

#### CRIMINAL.

1. The fees hereinafter mentioned shall be chargeable for serving and executing the processes to which the fees are respectively attached, *viz.* :—

(1) *Warrant of arrest.*—For the warrant in respect of each person named therein ... .. Rs. 1 8 0

(2) *Summons.*—For the warrant in respect of one person, or of the first two persons residing in the same place ... Rs. 0 12 0

In respect of every additional person named therein Rs. 0 6 0

(3) *Proclamation for absconding party under section 87 of the Criminal Procedure Code.*—For the proclamation ... Rs. 3 0 0

(4) *Proclamation for witness not attending (Sec. 87).*—For the proclamation ... .. Rs. 0 12 0

(5) *Warrant of attachment.*—For the warrant ... Rs. 1 8 0

Where it is necessary to place officers in charge of property attached, for each officer so employed, *per diem* ... Rs. 0 6 0

(6) *Written order.*—For the order ... Rs. 1 8 0

(7) *Injunction.*—For the injunction ... Rs. 1 8 0

*Note :—*The provisions of clauses iii and iv of section 31, Act VII of 1870, and of rules 3 and 4 below, apply also to injunctions.

Criminal officers are, however, reminded that injunctions in proceedings not connected with offences are not chargeable with any fee. An injunction under section 143, Criminal Procedure Code, would, for example, be chargeable with the above fee; whereas an injunction under section 144 or 145 of the Code would not carry any fee. (Rule No. 10 of 26th September, 1882.)

(8) *Notice*.—For the notice ... Rs. 1 8 0

### C—BOMBAY HIGH COURT.

#### Rules under S. 20 (ii)

*Fees chargeable for serving processes in case of certain offences.*

<sup>1</sup> The fees chargeable for serving and executing processes issued by the Court of any Magistrate in the case of offences, other than offences for which Police Officers may arrest without a warrant, shall be those shown in the appended Table.

#### Table.

1. In cases falling within chapters 19, 20 and 21 of the Indian Penal Code :—

(i) For every summons or notice	... Re. 0 4 0
(ii) For every warrant of arrest	... Re. 1 0 0
(iii) For every proclamation for absconding party or witness (Criminal Procedure Code, Sections 87 and 88)	... Rs. 1 8 0
(iv) For every warrant of attachment	... Re. 1 0 0

2. In all other cases the fee chargeable for every process shall be one-fourth of the fee shown in the above table.

*Proviso*.—No fee shall be levied on any process issued upon the complaint of any Public Officer acting as such Public Officer.

The court may remit the process-fees, in whole or in part, in cases other than those falling under Chapters 19, 20 and 21 of the Indian Penal Code, whenever the Court is satisfied that the complainant or the accused has not the means of paying them.

#### *Rules Under Sections 20 and 22 of the Court-fees Act.*

The following rules framed by the Honourable the Chief Justice and Judges of the High Court under sections 20 and 22 of the Court-fees Act, VII of 1870, confirmed by the Government of Bombay and sanctioned by the Governor-General of India in Council are published for general information—

I.—The fees at present levied for serving and executing processes issued by the High Court in its Appellate jurisdiction shall continue to be levied.

II.—The fees chargeable by all other Courts shall be those Civil Court's fees shown in the appended table.

III.—*Remuneration of bailiffs, pcons and other persons employed by any Civil Court, other than the High Court, in the service and execution of processes.*

[Omitted]

Rules IV to VIII relating to the strength of the process staff and the standard outturn of work is omitted as this will be found in the Rules and Orders of the High Court.

IX.—The following table contains the prescribed fees chargeable in Civil Courts in respect of Processes and Proclamations :—

**Table.**

*Fees chargeable in Civil Courts in respect of processes and proclamations.*

NAME OF PROCESS.	Amount leviable in		
	Any Court of Small Causes and any Subordinate Judge's Court in a suit in which no second appeal lies as provided in Section 586 of the Code of Civil Procedure.	District Court and Subordinate Judge's Court in cases not provided in the preceding column.	Mamlatdar's Court.
	Rs. A. P.	Rs. A. P.	R. A. P.
I.—For each summons or notice—			
(a) to a single defendant respondent, or witness...	0 4 0	1 0 0	0 3 0
(b) to every additional defendant, respondent or witness, residing in the same village, if the process be applied for at the same time ...	0 2 0	0 8 0	0 2 0
II.—For every warrant—			
(a) of arrest in respect of every person to be arrested ...	0 8 0	2 0 0	...
(b) of attachment in such warrant ...			
(c) of sale in respect of every such warrant ...			
III.—For proclamation, injunction or order and every process not otherwise provided for ...	0 8 0	2 0 0	...

*Note I.*—With the sanction of the court any party may pay the cost of proceeding by railway or any public conveyance where such is available, and in such case the process-server shall be bound to proceed by such railway or public conveyance.

*Note II.*—For process applied for and ordered to be executed as emergent the fee will be the ordinary and half as much again.

*Note. III.*—*Fee how to be charged.*—Where one individual is to be served in more than one capacity, e g, personally and also as guardian of a minor or minors, only one fee is to be levied.

*Note IV.*—*Re-issue of processes unserved.*—When a process issued by a Civil Court other than Mamlatdar's Court is returned unserved for service, a half fee only shall be charged on the occasion of each re-issue.

This rule applies whatever may be the reason which prevented service (e g.,) whether the failure to serve was due to the fault of the party on whose behalf it was issued or not, and whether the identical paper is re-issued or a fresh paper.

*Note V.*—*Issue of second process on service being set aside, etc.*—When the service is set aside in an inquiry under section 82, Civil Procedure Code,<sup>1</sup> or when witnesses, etc. have to be summoned a second time in consequence of the Court not sitting or not taking up, or not completing the having of the case on the day on which they were first summoned, no further fee is to be levied upon re-issue.

*Note VI.*—If a warrant has already been issued to arrest a judgment-debtor who has failed to pay the decretal amount and who has been ordered to be imprisoned in a civil jail, and such warrant of arrest is in force, no further fee is leviable on the order of committal to jail.

*Note VII.*—*Process issued by Court.*—No fee is to be charged for any proces issued by a Court of its own motion.

*Note VIII.*—*Exemption of proclamations.*—No process-fees shall be charged on proclamations under Section 10 of Regulation VIII of 1872.

*Note IX.*—*Fees for processes, etc., in suits under Act XVII of 1879.*—The fees levied for all processes in suits to which Chapter II of the Dekkhan Agriculturists' Relief Act (XVII of 1879) applies, except suits of description mentioned in section 3, clauses (w) and (x), to which an agriculturist is not a party, shall be one-half the fees which would be leviable in similar suits, to which the said Act does not apply.

*Note X.*—No fees shall be levied for the service of any notice or other process issued in proceedings taken under Chapter IV of the Dekkhan Agriculturists' Relief Act XVII of 1879.

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<sup>1</sup> See now Act V of 1908, First Sch., O, XI. R. 19.

*Note XI.*—Nothing contained in these rules (or in any rules heretofore made by the High Court under Section 20 of the Court-fees Act VII of 1870) shall apply to process issued by a Village Munsif under Chapter V of the said Act (XVII of 1874).

*Note XII.*—*Salary of bailiffs, etc., required from party.*—

- (a) When the services of one or more bailiffs or peons are required for a longer period than three days, the party on whose application the process was issued shall, in addition to the fee leviable under the above rules, be required to pay the whole salary of such bailiffs or peons for the whole period in excess of three days.
- (b) The time occupied in going and returning from the place at which service of process is to be made shall not be reckoned as a portion of the above period.
- (c) If the amount payable on account of salary under the above rule shall involve a fractional part of an anna, such part shall be remitted.

*Note. XIII.*—For the purpose of these rules the Courts of the Agents or Sardars shall be treated as District Courts and all other Civil Courts not specially mentioned, as Subordinate Judge's Courts.

118. *No Court-fee leviable on certificates of decree-holders under section 258, C. P. C.* No Court fee is leviable upon a certificate of a decree-holder under Section 258 of the Civil Procedure Code,<sup>1</sup> although such certificate declares that the judgment-creditor has received a smaller sum or a thing of less value in discharge of a larger sum due under the decree, or in complete discharge of the decree.

119. Any copy which on its first presentation has been duly stamped, and of which the stamp has been cancelled, may, if otherwise admissible, be used in the same or any other proceeding without a fresh stamp.

120. *Court-fees when to be paid and how.*—Before any process is issued in any Court the proper officer of the Court should calculate the amount to be paid as Court-fees, and should give information of such amount to the person by whom the fees are payable. Such fees should be paid before the end of the fourth day after the day on which such information is given. The Court may, for sufficient reason, extend the time for payment.

The stamps received for Court-fees should be affixed to the application upon which the process is to be issued.

*Process to be prepared after receipt of fees.*—After the fees have been received but not before, the necessary summons, notice, warrant or other process should be prepared.

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1. See now Act V of 1908, First Sch., O. XXI, R. 2.

*Levy of fees to be endorsed on process issued beyond jurisdiction.*—When the process is to be issued beyond the jurisdiction of the Court, a note should be made on the process to the effect that the proper fee has been levied.

121. *Process issued by Courts in British territory to be served free of charge in Bombay Presidency.*—A process issued by any Court in British territory should be served free of charge by any Court (including the Court of Small Causes at Bombay) in the Bombay Presidency, if it be certified in the Process that the proper fee has been levied under the rules in force in the territory in which the Court issuing the process is situated.—B. G. G., 1898, Pt. I, p. 354.

122. *Processes to Settlements how to be addressed. Fee and postage to be remitted* —Process for service in the Straits Settlements should be forwarded by the Registrar of the Supreme Court or Singapore, Penang or Malacca, as the case may be, and should be accompanied by a sum sufficient to cover the fees for service and postage, the remittance being by a Post Office Money Order.

Sufficient time, not less than three months from the date of posting, should be allowed by Courts for the service of summons and other documents on persons resident in the Straits Settlements and for the attendance of such persons before them. B. G. G., 1900, Pt. I, p. 2365.

123. *Particulars to be given in summons to His Highness the Nizam's territories.*—In summonses sent to the Resident at Hyderabad for service on persons residing in the territories of His Highness the Nizam the name of each person's place of residence, that is, the district, village and moholla (locality) should be given in full in the summons.—B. G. G., Pt. I, p. 1161.

In the case of summonses to be served in the City of Hyderabad, a period of five weeks should be fixed for return, and in the case of summonses to be served in the districts, a period of two months.—B. G. G., 1890, Pt. I, p. 125.

124. *Process to Burma.*—Processes sent for service at any place where the language is different from that of the Court issuing them, should be accompanied by translations in the language of such place or English. The language of the Presidency Small Cause Court, Bombay, is English.—B. G. G., Notn. No. 5149 of 1888 (B. G. G., 1888, Pt. I, p. 763).

125. *Foreign Processes.*—Foreign processes issued by British Courts under the provisions of Government of India Notification No. 1890--1, dated the 20th June, 1895, are not compulsory in British India.—B. G. G., 1901, Pt. I, p. 186.

126. *Processes from the H. E. H. the Nizams Courts.*—Processes issued by the District Civil Courts in His Highness the Nizam's Dominions direct to Civil Courts in British India for service in the Districts within the Presidency Proper, or to the Court of Small



Causes at Bombay, for service within the limits of the town of Bombay, shall be duly served by the Civil Courts concerned or the Court of Small Causes at Bombay, as the case may be, as if such processes had been originally issued by those Courts and returned direct to the Courts issuing them.

127. *Process to Nizam's Courts.*—Processes issued by any Civil Courts in British territory for service on persons residing in His Highness the Nizam's dominions shall be sent direct to the District Civil Courts<sup>1</sup> in those dominions having jurisdiction at the places where such persons reside, provided that processes for service in the City of Hyderabad and the suburbs shall be sent to the City Civil Court there.

Processes for service on persons residing in Paigah and Jagir ilakas should be forwarded to District Court of His Highness' Government in the jurisdiction of which the Paigah and Jagir is situated and not direct to the Paigah or Jagir authorities. In such cases it should be ascertained from the parties concerned whether the person to be summoned resides in a Jagir or Paigah village, and, if so, the name of the District Court within the jurisdiction of which that village is situated.—H. C., Sup. Civ. Cir. No. 15; B. G. G., 1904, Pt. I, p. 1742.

128. Where the processes for service in His Highness' dominions are issued for the appearance as a witness of any person residing there, the amount of batta and travelling allowances to which the witness is entitled shall be remitted, with the process, by Money Order.—B. G. G., 1899, Pt. I, p. 1161.

129. Processes sent by Courts for service from British India to His Highness the Nizam's dominions and *vice versa* will, after service, be conveyed back to the Courts of issue, whether British or Hyderabad, at single rates of postage.—B. G. G., 1901, Pt. I, p. 1432.

It is notified that general orders have been circulated by the Director General of the Post Office of India that duly franked official correspondence on the service of His Highness the Nizam will be delivered free.—B. G. G., 1901, Pt. I, p. 1141.

130. Courts in British territory should send direct to the Courts of Districts concerned all summonses or commissions intended for service or execution within the limits of the territories of Mysore, and should fix such dates for their return, as will admit of their service or execution within the appointed time.—B. G. G., 1900, Pt. I, p. 2488.

*The Mysore Darbar.*—Judicial notices, summonses and like judicial papers and notices in Revenue Appeals before the Mysore Darbar will be transmitted to the British authorities in India direct and not through the Resident.—H. C. Sup. Civ. Cir., No. 33; B. G. G., 1906, Pt. I, p. 403.

<sup>1</sup> For the designation of the Judges of District Courts and the names of the Districts in His Highness' dominions see B. G. G., 1889, Pt. I, p. 1161.

131. <sup>1</sup> *Process of certain Courts in Native States to be served free of charge by Courts in Bombay Presidency.*—Processes issued by the courts in Berar, Mysore, or in the territories of His Highness the Nizam, or in Gwalior, Dewan State (Senior branch), Dewan State (Junior branch), Rewa, Jaora Rutlam, Indore, Dhar, Jhabua, Brawani, Ali Rajpur, Bhopal, Orchha, Datia, Panna, Ajaigarh, Charkhari, Bijawar, Baoni, Chhatardur, Gharauli, "Kurwai and Narsingarh" <sup>2</sup> or by any of the Courts mentioned in the Government of India's Notification No. 4052 1 A., dated the 11th September, 1902, republished at pages 1639 to 1642 of the *Bombay Government Gazette* for 1902, Part I, or in subsequent notifications to which the provisions of section 650A of the Code of Civil Procedure <sup>3</sup> have been applied, shall be served free of charge by the Courts in the Bombay Presidency.

*Note.*—For the Table of the Courts to which the Governor-General in Council has declared the provisions of S. 650A <sup>3</sup> to apply, see the list in the Stamp Manual.

132. Legal process, Civil, Criminal and Revenue, of the Courts of the Bombay Presidency will be executed free of the process fees or postage-fees by the Courts of the Indore State.—B. G. Resolution, J. D., No. 4415 dated 19th July, 1902.

Process intended for His Highness the Maharaja Holkar's subjects should be addressed to the Resident of Indore. Those intended for subjects of the following States and Thakurats—Dewas senior and junior branches, Bagli, Pathari, Karaudia, Kheri Rajpur, Kaitha, Uni and Arnia, should be addressed to the First Assistant to the Agent to the Governor-General in Central India at Indore.—B. G. R., J. D., No. 8011, 18th December 1902.

Summonses and processes for service in the Indore State should be sent direct to the District Court of the District where the addressee resides and in the case of Indore City, to the City Munsif. Summonses for the Parganas of Alampur, Pitlawad and Chikalda (with headquarters of the same name) should be sent to the Pargana Munsiffs. The names of the districts in the State and their headquarters are as follows:—<sup>4</sup>

- |                                |     |     |              |
|--------------------------------|-----|-----|--------------|
| 1. Indore                      | ... | ... | Indore.      |
| 2. Nimar (which includes both  |     |     |              |
| Khargone alies Srikar Bijagarh |     |     |              |
| and Mandleshwar...             | ... | ... | Mandleshwar. |
| 3. Rampura Bhanpur             | ... | ... | Garot.       |
| 4. Nimawar                     | ... | ... | Kannod.      |
| 5. Mahidpur                    | ... | ... | Mahidpur.    |

<sup>1</sup> Printed as amended, B. G. G., 1889, Pt. I, p. 1077 and B. G. G., 1897, Pt. I, p. 406.

<sup>2</sup> The words quoted have been inserted by B. G. R. (P. D.), No. 1016, 9th February 1904, H. C. Sup. Civ. Cir. No. 6.

<sup>3</sup> See Now s. 29 of Act V of 1908.

<sup>4</sup> The names of Districts and Headquarters have been substituted by H. C. Sup. Civ. Cir. No. 66 (B. G. G., 1908, Pt. I, p. 1693) for those originally mentioned in Cir. No. 32.

When the name of the district where the summonsee resides is not known to the Court of issue, the summons may be forwarded to the "Indore Residency Vakil, Indore" for transmission to its destination. Criminal summonses and miscellaneous process for the recovery of money should be forwarded as heretofore to the Resident. Processes issued by the courts in Indore will be sent by the Courts direct and not through the Resident. The execution of a decree of Civil Court in British India can only be obtained in the Indore Territory by the decree-holder suing upon it in the Indore Courts.—B. G. Letter (J. D.), No. 997, 20th Feb. 1906; B. G. G., 1906, Pt. I, p. 403; H. C. Sup. Civ. Cir., No. 32.

Process intended for the subjects of the following States and Thakurates should be forwarded to the address of the Political Officers in whose respective charges they are shown below:—

States and Thakurates.	Address of the Officer holding the Political charge.
1. Karandih, Arnia and Kheri Rajpur.	The Resident at Gwalior, Post Office, Gwalior Residency.
2. Kaitha.	The Resident at Indore, Indore.
3. Dewas (Senior and Junior Branches), Bagli Pathari and Uni.	The Political Agent in Malway; Nimuch.

—G. R. (J. D.), No. 427, 21st Jan. 1909; B. G. G., 1909, Pt. I, p. 225; H. C. Sup. Civ. Cir., No. 75; cancelling G. R. (J. D.), No. 8011, 3th Dec. 1902; B. G. G., 1906, Pt. I, p. 403; H. C. Sup. Civ. Cir. No. 32 last para.

133. The Baroda Courts will serve all summonses issued by Civil Courts in British territory on the understanding that the Darbar will not be asked to enforce attendance. British Courts should serve Civil summonses issued by Baroda Courts, on similar terms—B. G. G., 1901, Pt. I, p. 186.

133A. Summonses issued by all British Indian Courts and all Courts established or continued by the authority of the Governor General in Council in the territories of any Foreign Prince or State, if sent to the Court of the Administrator, Sachin State, or that of the Diwan while the State is under British Administration, will be served by that Court as if the summons had been issued by itself, and after being so served will be returned with an endorsement of such service under the hand of the Judge of the Court. Bom. G. R. (P. D.) No. 6334, 22nd September 1920; H. C. Sup. Civil Circular No. 1.

134. The provisions of section 91 of the Civil Procedure Code (now Sch. I, O. V, r. 30) allowing the substitution of a letter for a summons are to be applied in the case of all Covenanted and Commissioned Officers, Justices of Peace, First Class Subordinate Judges, First Class Magistrates of rank not below that of Deputy

Collector, First and First Class Sardars and other gentlemen of equal or superior rank.

135. Care should be taken to address Ruling Chiefs and gentlemen of rank in the appropriate style, which in any particular case when necessity arises, may be ascertained from the Political Agent or the Political Department of the Secretariat. On proper occasions titles may be used.

136. When a village officer is summoned to give evidence, the summons should be served direct on such officer and a duplicate of it sent to the Mamlatdar, under whom he may be serving, for information; time being allowed, if possible for making official arrangement for performing the duties at the village of the officer summoned.

137. A Civil Court to which summons for other process has been sent for service should make a return within the time fixed for the hearing of the cause, stating whether service has been effected or not, and if not, the reason for the non-service.

138. If a Court to which a summons has been sent for service be satisfied that the defendant is intentionally avoiding service, such Court shall itself direct substituted service to be effected in such manner as it thinks fit under the provisions of the Code of Civil Procedure without further reference to the Court issuing the summons.

139. In cases under first schedule O. V, rr. 16 and 17, Civil Procedure Code Act V of 1908, the officer who serves the summons or notice on a defendant or respondent should immediately on his return, make an affidavit before the proper officer as to the service of the summons or notice for use in case it becomes necessary under O. IX, r. 6 to prove that the summons or notice was duly served and in case the Court considers under O. XIX, r. 1 of the Code, that there is sufficient reason for ordering the fact of service to be proved by affidavit.

140. No bailiff charged with the service of a process is entitled to call upon the party interested in the service to point out the person served.

It is the duty of the bailiff to use his best efforts to effect the service, and it is only when he fails, in spite of such efforts, that the Court may order the party to render help to him.

In cases where the serving officer does not know the individual on whom the process is to be served but such individual is pointed out to him, there should be a verification of the endorsement on the process by the bailiff and also by the person who points out the individual served. H. C. Sup. Civ. Cir. No. 55; Bom. G. G., 1908, Pt. I, p. 619.

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## D—CALCUTTA HIGH COURT.

RULES UNDER THE COURT FEES ACT, RELATING TO FEES PAYABLE UNDER THAT ACT, AS FRAMED BY THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

## PROCESS FEES.

The fees in the following tables shall be charged for serving and executing the several processes against which they are respectively ranged:—

## PART I.

*Table of Fees in the High Court, Appellate Jurisdiction.*

*Article 1.*—In every case in which personal or substituted service of any process on parties to the cause is required—

when not more than four persons are to be served with the same document—one fee ... .. Rs. 3 0 0

when such persons are more than four in number, then the fee abovementioned and an additional fee of 8 annas for every such person in excess of four ... .. Rs. 0 8 0

Provided that, in the last-mentioned case, where such persons reside in the same or immediately adjacent villages, the additional fee may be such sum, not exceeding the amount of fee prescribed, as the High Court may, in the particular case, determine.

Provided, also that, in analogous cases, where the appellant is the same, but the respondents are different, but reside in the same or immediately adjacent village, the same rule shall apply.

*Article 2.*—In every case in which personal or substituted service of any process on any persons who are not parties is required—

when the number of such persons is not more than four, one fee ... .. Rs. 3 0 0

when there are more than four such persons, then the fee abovementioned for the first four, and an additional fee of eight annas for every one in excess of that number ... .. Re. 0 8 0

*Article 3.*—For the execution of a warrant for arrest of person ... .. Rs. 3 0 0

*Article 4.*—For service or execution of any process issued by the Court, not specified in any preceding article of this Part ... .. Rs. 3 0 0

## PART II.

*Table of Fees in the Courts of Judges and Subordinate Judges and in the Revenue Courts, when the Suit in the Revenue Courts, by which the process is issued, is valued at a sum exceeding Rs. 1,000.*

*Article 1.*—In every case in which personal or substituted service of any process on parties to the cause is required—

when not more than four persons are to be served with the same document, *one fee* ... .. Rs. 2 0 0

when such persons are more than four in number then the fee above mentioned and an additional fee of 8 annas for every such person in excess of four ... .. Re. 0 8 0

*Article 2.*—In every case in which personal or substituted service of any process of any persons who are not parties is required—

when the number of such person is not more than four, *one fee* ... .. Rs. 2 0 0

when there are more than four such persons, then the fees above-mentioned for the first four and an additional fee of 8 annas for every one in excess of that number ... .. Re. 0 8 0

*Article 3.*—Where process of attachment of property by actual seizure is issued—

(a) for the seizure under the order of attachment Rs. 2 0 0

(b) for each man necessary to ensure safe custody of property so attached, when such man is actually in possession, *per diem* ... .. Re. 0 8 0  
(as amended by G. L. 11, dated 8-8-1921)

*Note 1.*—When process of attachment is issued in a number of cases relating to the same or neighbouring villages, the fee (a) must be paid in each case, the daily fee (b) only for the men actually employed.

*Note 2.*—The daily fee (b) is to be paid at the time of obtaining the process for so many days as the Court shall order not being ordinarily less than fifteen days, and the number of days required for the coming and going of the officer; but when the officer is not to be left in possession then the daily fee is to be paid only for the time to be occupied by the officer going, effecting the attachment, and returning. When the inventory filed by the judgment-creditor shows the property to be of such small value that the expense of keeping it in custody may probably exceed the value, the Court shall fix the daily fee with reference to the provisions of Order XXI, rule 43 of the Code of Civil Procedure:

Provided that if it appears that for any reason the number of days fixed by the Court under this note, and in respect of which fees have been paid, is likely to be exceeded, and the decree-holder desires to maintain the attachment, the decree-holder shall apply to the Court to fix such further number of days as may be necessary, and the additional fees in respect thereof shall be paid in the manner provided in rule 3. If such additional fees be not paid within the period originally fixed, and in respect of which fees have been paid, the attachment shall cease on the expiry of that period.

*Article 4.*—For the proclamation and publication of any order of prohibition under Order XXI, rule 54, of the Code of Civil Procedure, irrespective of the number of such proclamations or publications ... .. Rs. 2 0 0

*Article 5.*—For the publication by posting up a copy or copies of the notification of any proceeding or process, not specially mentioned in any article of this Part, irrespective of the number of such publication ... .. Rs. 2 0 0

*Article 6.*—For executing a decree by the arrest of the person or of executing a warrant of arrest before judgment (G. L. No. 7 of 1922) ... .. Rs. 10 0 0

*Article 7.*—When an order for the sale of property, other than an order for the sale of distrained property under Act VIII of 1885 is issued—

(a) for proclaiming the order of sale under Order XXI, rule 66 of the Code of Civil Procedure, a fee of ... Rs. 2 0 0

(b) for selling the property, percentage or poundage on the gross amount realized by the sale up to Rs. 1,000 at the rate of ... .. 2 per cent.

together with a fee on all excess of gross proceeds beyond Rs. 1,000 at the rate of ... .. 1 per cent.

Provided that, where a sale of immoveable property is set aside under Order XXI, rules 89, 90 and 91 of the Code of Civil Procedure, or under section 174 of the Bengal Tenancy Act, VIII of 1885, any poundage or other fee charged for selling the property shall on application be refunded.

Provided further that no refund shall be made on the application of the decree-holder when a sale is set aside on the ground of material irregularity or fraud in publishing and conducting the sale and it appears that decree-holder was privy thereto. (Rule 5 of 1921.)

*Note 1.*—The fee under clause (a) must be paid when the process is obtained.

The percentage or poundage under clause (b) must be paid—

- (1) in a case where the purchaser is a person other than the decree holder at the time of making the application for payment of the proceeds of sale out of Court, as provided in Rule 4: and
- (2) in case where the decree-holder has been permitted to purchase at the time of the presentation of his application for permission to set off the purchase money against the amount of the decree as provided in Rule 5.

*Note 2.*—The percentage leviable under this article shall be calculated on multiples of Rs. 25, i.e., a poundage fee of As. 8 should be levied for every Rs. 25 or part of Rs. 25 realized by the sale up to Rs. 1,000 and, in the case of the proceeds of the sale executing Rs. 1,000, an additional fee of As. 4 for every Rs. 25 or part thereof should be levied.

*Note 3.*—In case in which several properties are sold in satisfaction of one decree, only one poundage fees, calculated on the gross sale proceeds, should be levied, 2 *per cent.* being charged on the gross proceeds up to Rs. 1,000 and 1 *per cent.* on such proceeds exceeding Rs 1,000.

*Article 8.*—For service of any process not specified in any preceding article of this Part ... Rs. 2 0 0

## PART III.

*Table of Fees in the Courts of Munsifs and of Small Causes, and in the Revenue Courts, when Part II does not apply [except in the Suits specified in Part IV.]*

*Article 1.*—In every case in which personal or substituted service of any process on parties to the cause is required—

where not more than four persons are to be served with the same document, *one fee* ... Re. 1 0 0

where such persons are more than four in number, then the fee abovementioned and an additional fee of four annas for every such person in excess of four ... Re. 0 4 0

*Article 2.*—In every case in which personal or substituted service of any process of any persons who are not parties is required—

where the number of such persons is not more than four, *one fee* ... Re. 1 0 0

where there are more than four such persons, then the fee abovementioned for the first four and an additional fee of four annas for every one in excess of that number ... Re. 0 4 0

*Article 3.*—Where process of attachment of property by actual seizure is issued—

(a) for the seizure under the order of attachment Re. 1 0 0

(b) for each man necessary to ensure the safe custody of property so attached when such man is actually in possession, *per diem* ... Re. 0 8 0

(as amended by G. L. 11, dated 8-8-21).

*Note 1.*—When process of attachment is issued in a number of cases relating to the same or neighbouring villages, the fee (a) must be paid in each case, the daily fee (b) only for the man actually employed.

*Note 2.*—The daily fee (b) is to be paid at the time of obtaining the process for so many days as the Court shall order, not being ordinarily less than fifteen days, and the number of days required for the coming and going of the officer; but, when the officer is not to be left in possession, then the daily fee is to be paid only for the



time to be occupied by the officer in going, effecting the attachment, and returning; when the inventory filed by the judgment-creditor shows the property to be of such small value that the expense of keeping it in custody may probably exceed the value, the Court shall fix the daily fee with reference to the provisions of O. XXI, r. 43, of the Code of Civil Procedure :

Provided that, if it appears that, for any reason, the number of days fixed by the Court under this note, and in respect of which fees have been paid, is likely to be exceeded, and the decree-holder desires to maintain the attachment, the decree-holder shall apply to the Court to fix such further number of days as may be necessary, and the additional fees in respect thereof shall be paid in the manner provided in Rule 3. If such additional fees be not paid within the period originally fixed, and in respect of which fees have been paid, the attachment shall cease on the expiry of that period.

*Article 4.*—For the proclamation and publication of any order of prohibition under O. XXI, r. 54, of the Code of Civil Procedure, irrespective of the number of such proclamations or publications ... Re. 1 0 0

*Article 5.*—For the publication by posting-up of a copy or copies of the notification of a proceeding or process, not specially mentioned in any article of this part, irrespective of the number of such publications ... Re. 1 0 0

*Article 6.*—For executing a decree by the arrest of the person or for executing a warrant of arrest before judgment. (G. L. No. 7 of 1922) ... Re. 4 0 0

*Article 7.*—Where an order for the sale of property other than an order for the sale of distrained property under Act VIII of 1885 is issued—

(a) for proclaiming the order of sale under O. XXI, r. 66, of the Code of Civil Procedure, a fee of ... Re. 1 0 0

(b) For selling the property, a percentage or poundage on the gross amount realized by the sale up to Rs. 1,000 at the rate of *2 per cent.*

together with a further fee on all excess of gross proceeds beyond Rs. 1,000 at the rate of *1 per cent.*

Provided that when a sale of immoveable property is set aside under O. XXI, r. 89, 90 or 91 of the Code of Civil Procedure, or under s. 174 of the Bengal Tenancy Act any poundage or other fee charged for selling the property shall, on application be refunded.

Provided further that no refund shall be made on the application of the decree-holder when a sale is set aside on the ground of material irregularity or fraud in publishing and conducting the sale and it appears that the decree-holder was privy thereto. (Rule 5 of 1921),

*Note 1.*—The fees under clause (a) must be paid when the process is obtained.

The percentage or poundage under clause (b) must be paid—

- (1) in a case where the purchaser is a person other than the decree-holder—at the time of making the application for payment of the proceeds of sale out of Court as provided in rule 4, and,
- (2) in a case where the decree-holder has been permitted to purchase—at the time of the presentation of his application for permission to set off the purchase-money against the amount of his decree as provided in Rule 5.

*Note 2.*—The percentage leviable under this article shall be calculated on multiples of Rs. 25, *i e.*, a percentage fee of As. 8 should be levied for every Rs. 25 or part of Rs. 25 realized by the sale up to Rs. 1,000, and, in the case of the proceeds of the sale exceeding Rs. 1,000 an additional fee of As. 4 for every Rs. 25 or part thereof should be levied.

*Note 3.*—In cases in which several properties are sold in satisfaction of one decree, only one poundage fee, calculated on the gross sale-proceeds, should be levied, 2 *per cent.* being charged on the gross sale-proceeds up to Rs. 1,000, and 1 *per cent.* on such proceeds exceeding Rs. 1,000.

*Article 8.*—For service of any process not specified in any preceding article of this part ... Re. 1 0 0

#### PART IV.

*Table of Fees in the Courts of Munsifs, in Small Causes Courts, and in the Revenue Courts, where the suit is for debt or damage to personal property, or for rent and where the claim does not exceed Rs. 50.*

*Article 1.*—In every case in which personal or substituted service of any process on parties to the cause is required—

where not more than four persons are to be served with the same document, *one fee* ... Re. 0 8 0

where such persons are more than four in number, then the fee abovementioned and an additional fee of As. 4 for every such person in excess of four ... Re. 0 4 0

*Note.*—Suits under sections 30 and 52 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), are suits for rent within the meaning of the heading of this part.

*Article 2.*—In every case in which personal or substituted service of any process on any persons who are not parties is required, for each person to be served ... Re. 0 4 0

*Article 3.*—Where process of attachment of property by actual seizure is issued—

(a) for the seizure under the order of attachment Re. 0 8 0

- (b) for each man necessary to ensure the safe custody of properties so attached when such man is actually in possession, *per diem* (as amended by G. L. 11, dated 8-8-21) ... .. Re. 0 8 0

*Note 1.*—When process of attachment is issued in a number of cases relating to the same or neighbouring villages, the fee (a) must be paid in each case, the daily fee (b) only for the man actually employed.

*Note 2.*—The daily fee (b) is to be paid at the time of obtaining the process for so many days as the Court shall order, not being ordinarily less than 15 days, and the number of days required for the coming and going of the officer; but, when the officer is to be left in possession, then the daily fee is to be paid only for the time to be occupied by the officer in going, effecting the attachment, and returning, when the inventory filed by the judgment creditor shows the property to be of such small value that the expense of keeping it in custody may probably exceed the value, the Court shall fix the daily fee with reference to the provisions of O. XXI, r. 43, of the Code of Civil Procedure;

Provided that, if it appears that, for any reason, the number of days fixed by the Court under this note, and in respect of which fees have been paid, is likely to be exceeded and the decree-holder desires to maintain the attachment, the decree-holder shall apply to the Court to fix such further number of days as may be necessary, and the additional fees in respect thereof shall be paid in the manner provided in rule 3. If such additional fees be not paid within the period originally fixed, and in respect of which fees have been paid, the attachment shall cease on the expiry of that period.

*Article 4.*—For the proclamation and publication of any order of prohibition under O. XXI, r. 54 of the Code of Civil Procedure irrespective of the number of such proclamations or publications ... .. Re. 1 0 0

*Article 5.*—For the publication by posting up of a copy or copies of the notification of any proceeding or process, not specifically mentioned in any article of this Part, irrespective of the number of such publications ... .. Re. 1 0 0

*Article 6.*—For executing a decree by arrest of the person or for executing a warrant of arrest before judgment (G. L. No. 7 of 1922) ... .. Re. 1 0 0

*Article 7.*—Where an order for sale of property other than an order for the sale of distrained property under Act VIII of 1885 is issued—

- (a) for proclaiming the order of sale under O. XXI, r. 66 of the Code of Civil Procedure, a fee of ... Re. 1 0 0

- (b) for selling the property, a percentage or poundage on the gross amount realized by the sale up to Rs. 1,000, at the rate of 2 per cent

together with a further fee, on all excess of gross proceeds beyond Rs. 1,000, at the rate of 1 *per cent* :

Provided that when a sale immoveable property is set aside under O. XXI, r. 89, 90 or 91 of the Code of Civil Procedure or under s. 174 of the Bengal Tenancy Act (VIII of 1885), any poundage or other fee charged for selling the property shall, on application, be refunded.

Provided further that no refund shall be made on the application of the decree-holder when a sale is set aside on the ground of material irregularity or fraud in publishing or conducting the sale and it appears that the decree-holder was privy thereto. (Rule 5 of 1921.)

*Note 1.*—The fee under clause (a) must be paid when the process is obtained.

The percentage or poundage clause (b) must be paid—

- (1) in a case where the purchaser is a person other than the decree-holder—at the time of making the application for payment of the proceeds of sale out of Court, as provided in Rule 4, and
- (2) in a case where the decree-holder has been permitted to purchase—at the time of the presentation of his application for permission to set off the purchase-money against the amount of his decree, as provided in Rule 5.

*Note 2.*—The percentage leviable under this article shall be calculated on multiples of Rs. 25 *i.e.*, a poundage fee of eight annas should be levied for every Rs. 25 or part of Rs. 25 realized by the sale up to Rs. 1,000, and in the case of proceeds of the sale exceeding Rs. 1,000 an additional fee of four annas for every Rs. 25 or part thereof should be levied.

*Note 3.*—In cases in which several properties are sold in satisfaction of one decree, only one poundage fee, calculated on the gross sale proceeds, should be levied, 2 *per cent*. being charged in the gross proceeds up to Rs. 1,000 and 1 *per cent*. on such proceeds exceeding Rs. 1,000.

*Article 8.*—For service of any process not specified in any preceding article of this Part ... .. Re. 1 0 0

2. Notwithstanding Rule 1 no fee shall be chargeable for serving and executing any process, such as a notice, rule, summons or warrant of arrest, which may be issued by any Court of its own motion, solely for the purpose of taking cognizance of, and punishing any act done or words spoken in contempt of its authority.

3. The fees hereinbefore provided, except those mentioned in the next rule, shall be payable in advance at the time when the petition for service or execution is presented, and shall be paid by means of stamps affixed to the petition, in addition to the stamps necessary for its own validity.

4. The proceeds of a sale effected in execution of any decree will only be paid out of Court on any application made for that purpose in writing and the poundage fee for selling the property provided in clause (b) of Article 7 of Parts II, III and IV must be paid by stamps affixed to or impressed upon, the first of such applications whether it be or not made by the person who obtained the order for sale, or whether it does or does not extend to the whole of the proceeds. No fee will be chargeable upon any such application subsequent to the first.

5. In case in which the decree-holder applies for leave to purchase under O. XXI, r. 72, of the Code of Civil Procedure, no order to set off the purchase-money against the amount of the decree shall be made upon the application for leave to purchase. Such order shall be made upon a petition presented after the property has been knocked down to the decree-holder at the auction-sale, and such petition shall be stamped with stamps of the value of the poundage fee due for selling the property under clause (b) of Article 7 of Parts II, III, and IV.

6. Upon the hearing of such petition, the costs of execution, including the amount of the stamps attached to the petition, shall be ascertained, and shall be added to the decree; and in cases in which the amount of the purchase-money exceeds the amount of the decree, and of such costs, the decree-holder, who has so purchased the property, shall pay into Court the sum of 25 *per cent.* upon the balance of the purchase-money after deducting the amount of the decree and of such costs, and shall pay the balance at the expiration of fifteen days in accordance with O. XXI, r. 85 of the Code of Civil Procedure.

7. Throughout, or in any part of, the localities mentioned in the Schedule annexed to this rule, and for the periods of the year during which travelling except by boat is in the opinion of the District Judge, impracticable, the fees chargeable for the services of processes shall be increased by 25 *per cent.*, in order to provide for payment of the boat-hire or ferry toll rendered necessary by the state of the country. The additional fees may, however, be reduced to 12½ *per cent.* over the fees ordinarily leviable at the discretion of the District Judge in any part of the district where, or at any season of the year when, the levy of the larger amount is found to be unnecessary.

*Note 1.*—The process-server's boat-hire passed under this rule should alone be included under the head of "Process serving charges" under "Special Contingencies."—*Vide* Resolution of the Financial Department of the Government of Bengal, dated the 4th August 1890.

*Note (2)* The fee levied from parties on account of boat hire should be realised in Court-fees stamps. If the District Judge finds that the total annual realisation of boat hire exceeds the amount necessary to be paid out as boat hire in the course of the year, he

should exercise the discretion given him by Rule 7 above in such a way as to reduce the total annual realisation on account of the boat hire to the amount necessary to be expended for that purpose. Such fees shall be entered in column 7 of Form No. M. 60 for the purpose of ascertaining whether the total realisation of boat hire in court-fees covers the total annual expenditure on account of boat hire. (Rule No. 7 of 1921).

<i>Districts.</i>	<i>Local Areas.</i>
24-Parganas	... The Magrahat, Falta, <sup>1</sup> Kulpi, Kakdip, and Mathurapur Thanas of the Diamond Harbour Munsifi; the Baruipur, Matla, and Joynagar Thanas of the Baruipur Munsifi; the Bhangar, Sonarpur, Vishunpar, and Budge-Budge Thanas of the Sadar Munsifi; and the Haroa and Hasanabad Thanas of the Basirhat Munsifi.
Nadia	... The whole district. <sup>2</sup>
Murshidabad	... „ <sup>3</sup>
Jessore	... „
Khulna	... „
Hooghly	... The Arambagh Munsifi.
Rajshahi	... The whole district.
Dinajpur	... The Rajganj, Kaliganj, and Bunsihari Thanas of the Raiganj Munsifi, <sup>4</sup>
Rangpur	... The Kurigram and Gaibanda Munsifi and the Kaliganj Thanas of the Sadar Munsifi.
Pabna-Bogra	... The whole district.
Dacca	... „
Mymensingh	... „
Naridpur	... „
Backergunge	... „
Tippera	... „
Noakhali	... „
Chittagong	... The Cox's Bazar, Hathaxari North Raojan Munsifis. <sup>5</sup>
Cachar	... The whole district.
Sylhet	... „
Goalpara	... „
Kamrup	... „
Darrang	... „
Nowgong	... „
Sibsagar	... „
Lakhimpur	... „

1. Inserted by G. O. No. 7 of 28th November 1883.

2. Modified by G. O. No. 4 of 9th June 1900.

3. Modified by G. O. No. 2 of 30th August 1889.

4. Inserted by G. O. No. 1 of 29th August 1889.

5. Inserted by G. O. No. 5 of 13th September 1895.

8. (a) In such districts or parts of districts as are not for the time being subject to Rule 7, when, in order to the service of any process, the peon has to cross a ferry, then the amount, if any, legally eligible as toll shall be paid by the Court executing such process from its permanent advance.
- (b) The permanent advance mentioned in this Rule is the special permanent advance sanctioned by the Local Government for the purposes of the Rules.

9. In cases in which the process is to be served in the jurisdiction of another Court, the proper fee chargeable under Rule 1 read with Rule 7 shall be levied, in the manner above directed, on the application for the transmission of the process to that Court, and a note shall be made on the process stating that this has been done. A Court, which receives from another court whether in the same Province or not, a process bearing a certificate that the proper fee has been levied, shall cause it to be served without further charge.

*Note 1.*—The fees paid in pursuance of these rules must, in all proceedings, be deemed and treated as part of the necessary and proper cost of the party who pays them.

*Note 2.*—By arrangement between the Government of India and His Highness the Nizam of Hyderabad, Civil processes for service or execution within His Highness's territories will be issued and served in accordance with the above rule.

Processes issued by Civil Courts in His Highness the Nizam's territories, will be served or executed in the Provinces of Bengal Presidency free of charge.

*Note 3.*—As regards the service of process and execution of decrees in the Chittagong Hill Tracts, *see* Chapter I, Rules 41 and 87 of Civil Circular Order of the Calcutta High Court.

*Note 4.*—Process issued by Courts in India for service by Colonial Courts must be accompanied by a remittance sufficient to meet the cost of service. A sum of Rs. 32 is considered likely to cover such cost.

In Mauritius the cost of service is Rs. 3 per person in town, and to this must be added 75 cents per mile travelling allowance for service in the country. For processes not accompanied by an English translation and requiring translation in Mauritius, an additional fee of Rs. 10 should be remitted.

In the case of summons intended for service on a person in Mauritius the procedure indicated by O. V, R. 25 of the Code of Civil Procedure should be adopted whenever possible in preference to effecting service through the Mauritius Government.

## E—PROCESS FEES IN CENTRAL INDIA.

In exercise of the powers conferred by section 20 of the Court Fees Act 1870 (VII of 1870), as applied to the cantonments of Mhow, Neegong and Sehore, and Indore Residency Bazzars and the Civil and Lines of Nowgong, and with the previous sanction of the Governor-General in Council the Hon'ble the Governor-General in India is pleased to issue the following rules to regulate the fees chargeable for serving and executing-processes in the said areas.

I. The courts in said areas shall for the purpose of levying fees for the service of processes, be divided into three grades :—

Grades.	Courts.
First ...	The courts of the Agent to the Governor-General in Central India.
Second ...	First Appellate Courts.
Third ...	District Courts, Courts of Small Causes and other Civil Judges and Courts of Magistrates.

II. Fees for the service of processes shall be levied in each grade of Court according to the following scale, namely :—

Nature of process.	Courts of First grade.	Courts of Second grade.	Courts of third grade.
	Rs. A. P.	Rs. A. P.	Rs. A. P.
Summons, notice or other process not being a warrant of arrest or attachment ...	2 0 0	1 0 0	0 4 0
Warrant of arrest ...	4 0 0	2 0 0	0 8 0
Warrant of attachment ...	4 0 0	2 0 0	2 0 0

III. A separate process shall be issued for each person summoned or arrested, or upon whom a notice is served ; and subject to the rules iv and v a separate fee shall be charged for each process.

IV. When a service is set aside in any enquiry under the provisions of Order V, Rule 19 of the Code of Civil Procedure, 1908, or when witnesses, etc., have to be summoned a second time in consequence of the court not sitting or not taking up or not completing the hearing of the case on the day, on which they were first summoned, no further fee shall be levied on re-issue. In all other cases one half of the fees shall be levied upon re-issue.

V. When any process other than a warrant of arrest or of attachment, is to be served upon four or more persons being parties,



one fee only shall according to the scale in Rule II, be charged in respect of the first four processes and an additional fee, according to the subjoined scale, shall be charged for each process to be served in excess of four provided that the aggregate amount of the fee leviable under this rule shall not exceed the maximum prescribed for each grade of court.

Nature of process.		Courts of First grade	Courts of Second grade	Courts of third grade.
		Rs. A. P.	Rs. A. P.	Rs. A. P.
Rates of additional fee	...	0 8 0	0 2 0	0 2 0
Maximum	...	15 0 0	10 0 0	0 2 0

VI. The stamps received for court-fees shall be applied to the application upon which the process is to be issued.

VII. A process issued by any court in British territory whether of Civil, Revenue, or Criminal Jurisdiction or any court established by or continued by the Governor General in Council or by any Civil or Revenue court in Native States in Central India shall be served free of charge by any court in the said areas, if it be certified on the process that the proper fee has been levied under the rules in force in the territory in which the court issuing the process is situated. When any court in the said areas transmit a process for service or execution to any court beyond its jurisdiction a certificate shall be endorsed on the process that the fee chargeable under Rule II or Rule V as the case may be has been levied.

VIII. Ordinarily process-servers should travel on foot when proceeding to serve or execute processes, but in special cases, the judge of the court issuing the process may permit the journey to be made by Railway. In such cases the permission should be in writing and the railway fare should be paid from judicial contingencies, and not charged to the person at whose instance the process is issued.

IX. A court may remit the process fee, in whole or in part whenever it is satisfied that the complainant or the accused has not the means of paying them.

X. No fee shall be chargeable for any process of a Criminal Court issued through the Police in cognizable cases, or for any process issued by a court of its own motion in any case whatsoever or of any process issued upon the complaint of a public officer, acting as such officer. See Gazette of India, dated 27-9-1913, Part II, pp. 1797-99.

## F—LAHORE HIGH COURT.

## PROCESS-FEES AND PROCESS-SERVING ESTABLISHMENTS.

(SEC. 20, COURT-FEES ACT, 1870).

The following rules regarding process-fees and process-serving establishments have been made by the High Court with the sanction of Government and are re-published for the guidance of the Courts of the Punjab in supersession of all previous rules on the subject:—

The rules in Parts I, II and III are framed under sections 20 and 32 of the Court-fees Act, and those in Part III have been made with the concurrence of the Financial Commissioners.

2. The rules in Parts I, II and III regarding fees in civil processes and the number of process-servers to be entertained, call for no explanation. Attention is invited to section 21 of the Court-fees Act, which requires that a table of the fees chargeable on process in each Court should be hung up in some conspicuous place, and to the fact that under rule 4 an additional fee is now leviable on multiple processes.

3. The Court-fees Act, section 20, clause ii, restricts the levy of a fee on criminal process to non-cognizable cases. The levy of a fee in such cases is now authorised by rule 5 whether the process is served through the police or the process-serving establishment, and the fee for such processes has been fixed at a uniform rate of four annas.

4. Courts are reminded that, under section 31 of the Court-fees Act, in cases of conviction of an accused of the offence of wrongful confinement, wrongful restraint, or of any non-cognizable offence, the Court must by its order direct that the accused pay to the complainant any sum that he may have expended in issue of processes; and such sum may be recovered in the manner provided for recovery of fines.

5. Notwithstanding the separation of the Revenue from the Civil Courts, the control over income derived from process-fees in all Courts and Revenue offices, and expenditure on establishment, etc., from the source, is still at the desire of the Financial Commissioners, retained by the High Court, to which all references on the subject should be made as heretofore. It will be necessary for Commissioners and District Courts to maintain the registers and accounts prescribed by these Rules and Orders, and to submit the annual returns, in the prescribed form, referred to in paragraph 12 of Part IV of the rules.

6. The District Judge alone has powers, under the Punjab Courts Act with regard to ministerial officers of the Civil Courts and is responsible that proper attention is paid by the process-serving

establishment serving under his orders to the service of processes issued by Revenue and Criminal Courts, but the Local Government has, with effect from 1st August 1914, authorised the transfer of the control of the process-serving establishments of all Courts in each district from the District Court to the Senior Subordinate Judge.

7. The Civil Nazir must be regarded as the head of the process serving establishment; he will submit any reports relating to the members or the duties of the establishment to the Senior Subordinate Judge.

8. In making appointments to the post of Civil Nazir care should be taken to appoint thoroughly efficient men only. A person who is not competent to examine and keep accounts in both English and Urdu should not usually be entertained. Ordinarily, the Civil Nazir should not be employed on duties connected with the Criminal and Revenue Courts for which the District Nazir must be held solely responsible.

9. The Civil Nazir, Naib Nazirs, Maded Naib Nazirs, Execution Bailiff and process-servers will all be appointed by the Senior Subordinate Judge and will be dealt with under the powers conferred upon him by the Punjab Courts Act. (See paragraph 6 above.)

10. No one who is sickly, old, or incapable of a good deal of physical exertion should be appointed as Execution Bailiff or process-server. A knowledge of Urdu should be regarded as an indispensable qualification for appointment to the post of Execution Bailiff, and no one should ordinarily be appointed a process-server unless he has passed the Upper Primary Standard and can read and write some language current in the province. No process-server should be retained in service who is not capable of fully and intelligently carrying out the rules relating to the proper service of processes.

11. Ordinarily promotion ought to be confined within the line, and no employee or candidate in the clerical line should have any claim to a Bailiff's or Naib Nazir's post if there is a fit peon or Bailiff forthcoming.

Superior educational qualifications alone should not justify an outsider being given a superior appointment in this line, if a competent person, capable of doing the work efficiently, can be found in the lower grades.

12. The employment of process-servers upon duties unconnected with the serving of processes is absolutely forbidden.

13. The Civil Nazir will be expected to keep up the Civil Deposit and Repayment Accounts and to manage the execution of decree business. It is left to Senior Subordinate Judges to issue detailed instructions as to the duties which are to be performed by the Civil Nazir. The Civil Nazir should devote his time to the distribution of business amongst process-servers, the transmission of

processes to agencies located at tahsils for service the management of the accounts and correspondence regarding the payment of diet money to witnesses, and other similar matters connected with the carrying out of the system of serving process through agencies located at outlying tahsils.

14. The amount of security to be given by the various grades of officers employed in the process-serving establishment is as follows:—[Omitted.]

15. The maximum scale of process-serving establishments allowed to each district has been fixed, but the District Judge has power to distribute the process-servers sanctioned for the District Courts in such manner as he thinks fit, with reference to the amount of business coming before the different Courts and the distances to be traversed in serving processes; it must be understood, however, that the full number of process-servers should not be entertained unless they are actually required. Civil Register No. XXV is intened to show how the work is distributed amongst the different process-servers and controlling authorities should frequently inspect this register for the purpose of satisfying themselves that no unnecessary process-servers are entertained. Every marked diminution in work or income should be followed by a reduction of establishment.

#### PART I.

##### RULES UNDER SECTION 20, CLAUSES (i) AND (ii).

*Rules made by the High Court under the power conferred by section 20, clauses (i) and (ii), of the Court-fees Act, VII of 1870, confirmed by the Local Government regarding the fees chargeable for serving and executing processes issued by the High Court in its Appellate jurisdiction and by the Civil, Revenue and Criminal Courts established within the local limits of such jurisdiction.*

#### RULES.

1. The Civil and Revenue Courts of the Punjab shall, for the purpose of levying process fees, be divided into three grades as shown in the annexed table:—

Grade.		Civil Courts,	Revenue Courts.
First	...	The High Court,	The Court of the Financial Commissioners.
Second	...	District Courts.	Courts of Commissioners
Third	...	Courts subordinate to the District Court.	Courts of Collectors and Assistant Collectors.

be retained for the Court of each Commissioner, District and Sessions Judge, and for each district in the province.

2. The number of process-servers to be retained in each district shall be allotted by the Senior Subordinate Judge, subject to the control of the District Judge and High Court, to the various Courts of the District in such manner as shall be most convenient for the service of processes.

3. In submitting proposals with regard to the maximum number of process-servers to be retained in any district, and in distributing the process-servers retained amongst the various Courts, the Senior Subordinate Judge should ascertain, and report when necessary, the number of processes issued from his own Court and from every other Civil, Revenue and Criminal Court in the district during each month of the previous year; and the maximum number of process-servers fixed for each Court shall be so many as are sufficient for the service of the largest number of processes ascertained to have been issued in any one month. In calculating the number of process-servers capable of serving such ascertained number of process, regard shall be paid to,—

- (a) the average distance travelled by the peon;
- (b) the nature of the country to be traversed and the local circumstances;
- (c) the number of process-servers by whom the processes were actually served.<sup>1</sup>

4. Should it appear to the Court, on the motion of a party to a suit or proceeding, or otherwise, that, for the convenience of the parties or for some other reason, it is expedient that any process should be executed by special messenger, such process shall be so executed. Except in the case of a warrant for arrest, a special fee will be payable for such emergent service; and the Court will at the time of making its order, declare by whom the fee shall be paid and whether it shall be included in the costs of the suit or be charged to a particular party.

5. The process-servers entertained under those rules shall be employed exclusively in the work of serving and executing processes.

## PART IV

### SUBSIDIARY INSTRUCTIONS REGARDING PROCESS-FEE AND PROCESS-SERVING ESTABLISHMENTS FOR THE GUIDANCE OF THE COURTS AND PROCESS-SERVERS IN THE PUNJAB.

1. Process-serving establishments are appointed and dealt with in accordance with sections 35 to 37 of the Punjab Courts Act, 1918, as amended.

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<sup>1</sup> In fixing the number of process-servers regard must be had to the system of serving processes through agencies located in tahsils.

2. Every appointment of a process-server shall be registered in the Court of the Senior Subordinate Judge of the district in which the appointment is made, together with the following particulars:— The name of the process-server, his age, his place of abode, his father's name, and the date of appointment. The names of the process-servers should be entered according to the date of their appointment in a register containing the above particulars, and a column of remarks should be added for the entry of such notice respecting the conduct of each process server as the presiding Judge may from time to time deem it necessary to record.

3. There shall be one such register for the Commissioner's Court, one for the Court of the District Judge, one for the Senior Subordinate Judge's Court and other Subordinate Courts, and one for each Court of Small Causes.

4. Except in cases of necessity, when the special leave of the Court must be obtained, no person other than a registered process-server shall be employed in the service or execution of any Civil or Criminal process; the reason for granting such leave should be recorded.

5. Every registered process-server shall be supplied with a belt and badge showing in English and Vernacular the Court to which he belongs. The cost of such belt and badge shall be defrayed from judicial contingencies.

6. The total amount of contingencies expended on process-serving establishments should not exceed ten *per cent.* of the cost of such establishment for the year.

7. In selecting persons as process-servers those who can read and write should be preferred. Ordinarily no one should be appointed as process-server unless he has passed the Upper Primary Examination.

8. No process shall be prepared or issued until the proper fee for the service thereof has been paid. When such fee is paid the court-fee label denoting the fee shall be affixed to the diary of process-fees and immediately punched, the process shall then be prepared, it being left to the party who applied for the process to issue it or not as he thinks fit. This will obviate the necessity for making any refund of the value of Court-fees filed on account of processes which are not eventually issued.

9. On every process issued from any Court the following particulars shall be recorded, namely:—(1) the name of the process-server deputed to serve or execute the same; (2) the period within which the process-server is required to certify service or execution; (3) the amount of fee paid and the date of payment; and (4) the date of return after service or execution.

Such endorsement shall be signed by the Civil Nazir or Naib Nazir, or Bailiff.

10. An account of court-fee stamps realised as process fee of processes issued (Civil, Revenue and Criminal), of the number of process-servers employed, of the cost of establishment and of contingencies, shall be kept for each Court where a separate establishment is entertained.

11. A statement giving information on the above points should be submitted with the annual civil reports.

12. With the record of each Civil and Revenue case, and of each Criminal case in which process-fees are levied, should be kept a separate sheet of paper to be termed the 'Diary of process fee' which should be devoted to the sole purpose of maintaining a record of process-fees. This diary should be in the prescribed form, and should form a portion of Part B. In it entries should be made in chronological order of every process ordered to be issued in the case, and the stamps should be affixed opposite each entry and cancelled immediately upon being affixed.

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### G—MADRAS HIGH COURT.

#### A—PROCESS FEES AND POUNDAGE.

##### I. MUFFASAL CIVIL COURTS.

<sup>1</sup> 1. (1) The following schedule of fees chargeable for serving and executing processes issued by the High Court of Madras in its appellate jurisdiction and by all Civil and Revenue Courts established within the High Court's appellate jurisdiction, having been framed by the High Court under Section 20 of the Court-fees Act, 1870, and confirmed by the Government of Madras and sanctioned by the Governor-General of India in Council, will come into force from the 1st day of July 1884.

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1. Notification No. 209, Judicial, dated 16-6-1884, Fort. St. George Gazette, dated 24th June 1884, Part I, p. 382.

Nature of process.	Amount leviable in					
	Any Court of Small Causes, District Munsiff's Court or Revenue Court.			District Court or Sub-Judge's Court where the process is not issued in a Small Cause Case.		
I. For each summons or notice—	Rs.	A.	P.	Rs.	A.	P.
(a) to a single defendant, respondent or witness ... ..	0	8	0	1	0	0
(b) to every additional defendant, respondent or witness, residing in the same village, if the processes be applied for at the same time ... ..	0	4	0	0	8	0
II. For every warrant—						
(a) of arrest in respect of every person to be arrested ... ..	1	0	0	2	0	0
(b) of attachment in respect of every such warrant ... ..						
(c) of sale in respect of every such warrant ... ..						
(d) of delivery of possession in respect of every such warrant ... ..						
With an additional fee for the services of every officer entrusted with the warrant for each day after the third day, beginning with the day on which the warrant was issued.						
(e) if such officer is an amin ... ..	0	6	0	0	8	0
(f) if such officer is a peon ... ..	0	4	0	0	6	0
(g) if such officer is a Revenue Inspector ... ..	0	8	0	...		
III. For every process in execution of Village Court's decree ... ..	0	8	0	...		
(Note.—If the process is not executed no further fee for re-issue shall be levied )						
IV. For proclamation, injunction or order and every process not otherwise provided for ...	1	0	0	2	0	0
an additional fee being leviable after the third day as above.						
V. In respect of sales, a fee by way of poundage on the purchase money calculated at one anna in the rupee on the first 350 rupees, half an anna in the rupee on any additional sum up to rupees 1,000 and $\frac{1}{4}$ anna in the rupee on any additional sum above rupees 1,000.						

Notes 1.—Any party may deposit the cost of proceeding by railway or any public conveyance, where such is available, and in such case the process-server shall be bound to proceed by such railway or public conveyance and the cost so



deposited shall be part of the costs of the cause: Provided, that when processes have to be executed in the Wynnad Taluk, the party shall deposit the actual cost of bus fare from the Court to the place of execution and back and such cost shall be part of the costs of the cause (substituted by P. Dis. No. 572 of 1932 dated 19-7-32).

*Note 2.*—For process applied for and ordered to be executed as emergent, the fee will be the ordinary fee and half as much again.

*Note 3.*—If the poundage chargeable on the purchase-money should involve fractions of an anna, half an anna or more shall be taken as an anna and fractions less than half an anna shall be omitted from the amount payable. (*Added by notification, dated 29th April 1924, Dis. No. 1110/24*).

*N. B.*—(1) Each process should be paid for according to the time which it really occupies. The party must not be charged for time occupied in serving processes other than his own, but he must pay for all the days which his own process or processes would have occupied, if it or they had alone been entrusted to the server. When one applicant puts in several processes to be executed at the same time in the same locality, the charge for any additional days occupied on account of such processes may be distributed over them.

(2) The High Court considers that there is nothing objectionable in levying the additional fee in advance when it is calculated that the journey to and fro and the work to be done will take more than three days in all and that, for this purpose, a journey of 15 miles a day may fairly be taken as a rough basis of calculation, not necessarily to be adhered to in all circumstances.

(3) In cases, however, in which a process which would ordinarily have been executed within the three days allowed by the rules, has actually taken, contrary to expectation, more than three days to execute, the High Court considers that no additional fee need be collected subsequently for the excess number of days. The original levy should be regarded as final, as such cases are not frequent and there would be difficulty in collecting the excess.

2. *1 Addendum to the schedule of process fees.*—The following *addendum* to the schedule of fees made by the High Court and chargeable under the rules framed in accordance with the provisions of Section 20 of the Court-fees Act, VII of 1870, which has been confirmed by His Excellency the Governor in Council and sanctioned by the Government of India is published:—

(1) In every case in which application is made to a Court for the issue of process beyond the jurisdiction of the Court there shall be levied the fee that would be leviable for the issue of such process in the Court to which the application is made.

(2) The fees levied under this rule must be paid in Court-fee labels of the proper amount to be affixed to the application; such labels shall be punched by the officer appointed to receive the application, who will endorse a note on the process that the proper fee for the issue thereof has been levied.

(3) When process is forwarded by any Court in British India or in the State of Mysore or [in the State of Cochin], [Bangalore], Sandur, Pudukottai or Travancore] or [in the territories of His Highness the Nizam] to a Court subordinate to the High Court for execution, such subordinate Court shall accept the certificate endorsed on the process as sufficient proof that the proper fee for the issue thereof has been paid and shall deliver such process to the proper officer for service and shall re-transmit the process to the Court by which such process was transmitted to it, with a return

<sup>1</sup> Notification No. 398, Judicial, dated 1-8-1885. Fort George Gazette, dated 25-9-1885, p. 628.

in the form number 121 (now Sch. I, Appendix B, Form No. 10), Civil Procedure Code, and with the endorsement of the process-server, showing, if service has been effected, in what manner it has been effected; and if service has not been effected, the reason why it has not been effected; and such endorsement shall be verified by oath or affirmation of the process-server.

The Honourable the Judges consider that the levy of ferry charges is unauthorized and undesirable especially when the process-server is allowed to collect the charges direct from the parties as is reported to be the case in a Kistna district. As, however, cases in which boat charges are levied cannot be numerous they do not consider it necessary to draw up a complete schedule of rates for private ferries in each district and to authorize the collection of fees by rule.

The Honourable the Judges are therefore of opinion that the fees in such cases may be borne by Government and debited to contingencies,

## II. - (a) Calculation of poundage.

### (1) Poundage to be charged on each lot.

The High Court is of opinion that poundage should be calculated on sale proceeds of each lot separately.

### (2) Poundage on bids by decree-holders.

Rule 200 (1) of Ch. IX Part I of the Civil Rules of Practice and Circular Orders provides that "if the applicant purchases the property with the leave of the Court, and is allowed to set off the purchase-money against any sum due to him he shall pay the amount chargeable as poundage to the person appointed to sell the property, so soon as he is declared to be the purchaser." This rule ought to be followed also in cases, where the purchase-money exceeds the amount mentioned in the warrant, credit being of course given for the poundage fee afterwards when the purchase-money is adjusted.

## (b) Refund of poundage and Process Fees.

1. It has come to the notice of the High Court that refunds of poundage and process-service fees are sometimes treated as Judicial refunds, under 19-A, Law and Justice. Such refunds should be treated as refunds of Stamp Revenue and debited to "1. Refunds—Revenue Refunds—Stamps—Surplus Process Fees."

2. The High Court describes the form appended to this circular for adoption in all districts in refunding *poundage* and *process fees*, [A refund shall in the first instance, be made from the permanent advance with the head ministerial officer and shall be recouped by means of contingent bills, headed "Refund of Process and Poundage Fees," drawn on the treasury at the end of the month]. The refund vouchers in the form now prescribed should be attached to the contingent bills even when they are for sums of Rs. 10 and less, and the vouchers should on no account, be cancelled or destroyed as in the case of sub-vouchers for ordinary contingencies. The officer sanctioning refund should, at the time of signing the refund order, exercise the necessary check by comparing the voucher with the entries in the registers maintained in the Court.

3. When a refund has to be made after a process has been transmitted for service from one Court to another, the refund order should be forwarded to the Judge of the Court in which the process fees have been deposited with request that the amount of the refund may be paid from his permanent advance, instead of the order itself being made directly payable from the treasury.

4. When more than the amount required for the service of process is deposited, or when issue of process becomes unnecessary after deposit, the Courts are authorized to refund to the depositor the amount of the surplus fees in money and to charge the contingent fund.

5. Applications for refund of process-fees shall be made before the expiry of six months from the date on which the process-fees were paid into Court. On applications made thereafter, a penalty of one anna in the rupee or a fraction of a rupee shall be levied when making refund, (Added by notification dated 8-12-31—Vide G. O. No. 3298 Law-General dated 6-9-1932).

## 1 II. THE MADRAS CITY CIVIL COURT.

Nature of process.	Amount leviable.	
	In suits in which the value of the subject-matter in dispute does not exceed Rs. 1,000.	In all other suits.
	Rs. A. P.	Rs. A. P.
I. For each summons or notice		
(a) To a single defendant or witness ...	0 8 0	1 0 0
(b) To every additional defendant or witness residing in the same Municipal Division of the city of Madras if the process be applied for at the same time ...	0 4 0	0 8 0
II. For every warrant		
(a) Of arrest in respect of every person to be arrested.	1 0 0	2 0 0
(b) Of attachment in respect of every such warrant		
(c) Of sale in respect of every such warrant ...		
(d) Of delivery of possession in respect of every such warrant.		
with an additional fee for the services of every officer entrusted with the execution of the warrant for each day occupied in its execution after the 3rd day beginning with the day on which the warrant was issued ...	0 4 0	0 6 0
III. For every proclamation, injunction or order, an additional fee being leviable after the 3rd day as above ...	1 0 0	2 0 0
IV. For each process not otherwise provided for herein ...	0 4 0	0 6 0
V. In respect of sales, a fee by way of poundage on the purchase money calculated at half anna in the rupee on the first five hundred rupees and quarter anna in the rupee on any additional sum above Rs. 500.	0 8 0	1 0 0

*Note 1.*—Any party may deposit the cost of proceeding by railway or any public conveyance, where such is available and in such case the process-server shall be bound to proceed by such railway or public conveyance and the cost so deposited shall be part of the costs of the cause.

*Note 2.*—For process applied for and ordered to be executed as emergent, the fee will be the ordinary fee and half as much again.

All fee chargeable under this schedule shall be collected and dealt with in the same manner as fees chargeable under the Court-fees Act of 1870.

1 Notification No. 500, Judicial, dated 10-12-1892. Fort St. George Gazette, Part I, p. 1553.

## III. VILLAGE COURTS.

R. 57. <sup>1</sup> The following shall be the amount of fees leviable for the service of summons under Section 27 of the Act upon defendants beyond the local jurisdiction of the Village Court, *viz.* :—

For each summons—

- (a) to a single defendant ... 8 annas.
- (b) to every additional defendant residing in the same village if the process be applied for at the same time ... 4 annas.

The following fees shall be leviable for summons under Sections 25 and 40 of the Act which are served otherwise than by a village servant :—

- (i) For every witness or defendant resident within the limits of the local jurisdiction of the Court ... 1 anna.
- (ii) For every witness resident beyond the limits of the local jurisdiction of the Court ... 2 annas.

*Notification No. 144 Law, General, dated 28-2-1922. See Fort St. George Gazette, dated 7-3-1922, pp. 256-262.*

*Note.*—In cases where the witness resides outside the jurisdiction of the village Court issuing the summons or forwarding the interrogatory a fee of two annas will be levied under rule (ii) alone. If the village munsiff to whom the summons is directed or the interrogatory is forwarded has a special establishment for the service of processes, the fee for serving the summons or issuing a summons to a witness to whom the interrogatory is addressed will under rule (i) be one anna. See C. R. P. and C. O. Vol. I, p. 274.

*In Yercaud.*

In exercise of the powers conferred upon him by Section 29 of the Madras Village Court Act, I of 1889, and in modification of Notification No. 179, dated 22nd April 1893, published in the *Fort St. George Gazette*, dated 25th April 1893, page 455, Part I, amended by the *erratum* published at page 528, Part I of the *Fort St. George Gazette*, dated 8th May 1894, the Governor in Council is pleased to declare that the following fees shall be leviable for summonses issued in writing under Sections 25 and 40 of the said Act which are served otherwise than by a village servant within the jurisdiction of the Village Munsif of Yercaud in the Salem district :—

- (1) For every summons to a witness or defendant resident within the Yercaud Union ... 1 anna.
- (2) (a) For every summons to a witness or defendant resident outside the Yercaud Union and within the jurisdiction of Village Munsif of Yercaud ... 2 annas.
- (b) The fees for the execution of decrees shall be 8 annas.
- (c) All fees must be paid in cash.

<sup>1</sup> Number in the consolidated rules under the Madras Village Courts Act issued by the Government in G. O. No. 572, Law (General) dated 2-3-1922.

## B—PROCESS SERVICE RULES.

The following rules, <sup>1</sup> under Section 20 of the Court Fees Act, No. VII of 1870, for the service and execution of processes issued by the Civil Courts outside the Presidency Town in the Madras Presidency, have received the sanction of the Governor-General in Council:—

I. *Central Nazarats*.—There shall be one general establishment of amins and peons for the execution and service of processes issued by all the Civil Courts at the following stations and at such other places as the High Court may hereafter direct:—Vellore, Cuddalore, Chingleput, Chittoor, Coimbatore, Cuddapah, Berhampore, Cocanada, Rajahmundry, Ellore, Guntur, Bapatla, Mangalore, Bazwada, Masulipatam, Madura, Tellicherry, Calicut, Palghat, Nellore, Salem, Mayavaram, Negapatam, Tiruvarur, Kumbakonam Tanjore, Tinnevely, Tuticorin, Trichinopoly and Vizagapatam.

Such establishment shall be under the immediate direction of a Central Nazir and the control of the District Judge; or of the Sub-Judge in the event of a Central Nazarat being established at any station where there is no District Judge. (Substituted by Notification dated 6-7-1932—Vide G. O. Ms. No. 1700 Law General dated 27-4-1932).

II. *Deputy Nazir at outlying stations*.—At all other stations the process establishment shall be under the immediate direction of a Deputy Nazir who shall be under the control of the District Munsif having jurisdiction at such station.

III and IV. [Relates to pay and security of Nazirs—Omitted.]

V. *Officers to whom processes should be transmitted for service*.—The proper officer to whom processes shall be transmitted for service under Section 72 of the Code of Civil Procedure, 1882 (Order V, Rule 9 of the Code of 1908) shall be:—

- (a) The *Central Nazir* in respect of all processes issued by any Court located or having jurisdiction at a station where there is a Central Nazir, for service within the jurisdiction of a Munsif located at such a station.
- (b) The *Deputy Nazir*, at stations where there is no Central Nazir, and in respect of process issued by any superior Court for service within the jurisdiction of an outlying Munsif.

VI. *Presentation of application for issue of process and procedure thereafter*.—(1) All applications for the issue of processes except those for the issue of emergent processes whether money is deposited with them or not, <sup>2</sup> and except those (accompanied with processes

<sup>1</sup> Judicial Notification No. 42, dated 29th January 1884, published at pages 111 to 114 of Part I, Fort St. George Gazette, dated 19th February 1884.

<sup>2</sup> Added by R. O. C. No. 2163 of 1928. C. L. Notification dated 11-9-1928. Fort St. George Gazette, Pt. II, pp. 1352-1353.

prepared or not)<sup>1</sup> presented along with the plaint memorandum of appeal, cross objections or application to the Chief Ministerial Officer, shall be presented to the Central or Deputy Nazir, who shall enter them in a register in the form prescribed. Where money is deposited it shall be paid to the Central or Deputy Nazir who shall grant a receipt to the party, out of his receipt book, in the form prescribed (*vide* Civil Register No. 51). He shall maintain as many receipt books and as many registers, as there are courts whose processes are served by him.

(2) The application shall next be entered in a register in the form prescribed (*vide* Civil Register No. 53-A) and forwarded to the clerk in charge of the records of the suit or proceeding to which the process applications relate who shall return them with the copies of plaints, etc., if any, to be delivered to the defendants and such records as may be necessary for the correct preparation of the processes. The process writer shall then prepare the processes in the order of receipt of applications and return the records when no longer required to the record clerk and obtain his acknowledgment,

(3) Where the High Court from time to time directs that the preparation of processes issuing from any specified Court shall be under the supervision of the Chief Ministerial Officer of the Court instead of under the Central or Deputy Nazir, the Central or Deputy Nazir shall, after entering in his register applications relating to the issue of such processes, transmit them daily at 3 p. m. or such hour as the District Judge may fix to the Chief Ministerial Officer of the Court concerned with Register C (*vide* Civil Register No. 53-A). The Chief Ministerial Officer shall return them with the copies of processes daily at 1 p. m. or such hour as the District Judge may fix to the Central or Deputy Nazir for service.

(4) *Emergent processes.*—Applications for the issue of emergent processes shall be made direct to the Court concerned, and the Court ordering the issue of such processes may direct one of its own officers to receive the process memos, direct from the party or his pleader. The processes shall then be prepared urgently under the supervision of the Chief Ministerial Officer of that Court, and the process memos, with the processes shall then be transmitted urgently to the Central or Deputy Nazir for entry in his B Register (*vide* Civil Register No. 53) and emergent execution of the processes.

*Instructions for the guidance of Central and Deputy Nazir.—*

The Process Service Rules having been amended so as to make the Central or Deputy Nazir solely responsible for the transactions connected with the receipt, preparation, service and return of the processes issued by Civil Courts, the High Court hereby issues the following instructions for their guidance.

1. All papers presented to the Central or Deputy Nazir under the revised rules shall immediately on receipt be impressed with a date stamp which may be

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1 Note.—Now see R. 49-A Civil Rules of Practice and Circular Orders, Volume I, by which parties are to file process forms duly filled up.

of a design different from that of the date stamp used by the Chief Ministerial Officer. Date stamps may be obtained on indent from the Superintendents, Government Press.

2 \* \* \* \* \*

3. The Central or Deputy Nazir shall sign the processes now signed by the Chief Ministerial Officer and affix to the processes so signed a duplicate court seal with the word "Nazarat," inscribed thereon, which will be supplied to him for the purpose.

4. The presiding officer of the Court shall send money orders relating to the service of processes received by him to the Central or Deputy Nazir, instead of to the Chief Ministerial Officer. The Central or Deputy Nazir shall make a note of the particulars relating to the money orders in his register.

5. A notice showing the unexpended witness batta available for refund and directing parties and pleaders concerned to apply for refund on such two days in each week and at such hours as the Court may in its discretion fix with due regard to the convenience of all parties, shall be exhibited on the notice board of the Court daily. In cases where the party or his pleader has failed to obtain a refund of the unexpended witness batta within the time prescribed in rule 170 and where the same has had to be remitted to the Treasury, a penalty of one anna per half rupee or fraction thereof shall be imposed upon the party in the event of his applying for refund at a later date.

<sup>1</sup> (5) Application for issue of process accompanied with process prepared or not presented along with the plaint, memorandum of appeal, cross objection or application shall after the plaint, memorandum of appeal or cross objection or application has been admitted, be transmitted to the Central or Deputy Nazir who will enter them in the B Register (Civil Register No. 53).

VII. *Intimation of receipts and disbursements in the Nazarat to the Chief Ministerial Officer.*—As soon as possible after 3 p.m. or such hour as the District Judge may fix, the Central or Deputy Nazir shall send to the Chief Ministerial Officer the receipt books and a statement of the totals of stamps and all amounts received and of money expended during the day, in order that the necessary entries may be made in the cash book, ledger and register of documents and court-fees.

VIII. *Lists of processes for service in other Nazarats.*—One hour before the post time for each outlying Munsif's station, the Central or Deputy Nazir of each Court shall prepare lists from his registers of all processes to be served or executed within the jurisdiction of outlying Munsifs and such lists shall forthwith be sent by post on His Majesty's Service to Deputy Nazirs together with all such processes.

IX. *Procedure on receipt of processes for service.*—On receiving any batch of processes, the Central or Deputy Nazir, as the case may be, shall give them general numbers and enter them in a register which will be kept by himself or under his superintendence in the form B, annexed hereto (*vide* Civil Register No. 53).

<sup>1</sup> G. O. 2865 Mis. Law General, Notification, dated 11-2-1928 Fort St. Gazette, Part II, pp. 1352-1353,

X. *C. Roster.*—He shall thereupon arrange for the distribution of the processes, and, after the necessary entries have been made in the Roster C (form C, hereto annexed *vide* Civil Register No. 54) shall deliver them to the several process-servers. As far as possible all processes, other than warrants of arrest, for persons residing in the same neighbourhood, shall be served by one process-server and not by several, whether issued by the same or by different Courts.

XI. *List of processes executed.*—Every day at such hours as the District Judge may fix, having regard (when necessary) to the hours at which the post closes, each Central or Deputy Nazir shall prepare a list for each Court of the processes to be returned to it, giving them their original Court numbers and shall transmit them with the list to the Central or Deputy Nazir who issued the processes, and the latter shall thereon sign and return the list. (Substituted by Notification, dated 4th October 1918.)

XII. *Delay in return of processes to be reported.*—It shall be the duty of the Central or Deputy Nazir to have the processes returned struck off in his register and to bring to the notice of the presiding Judge, any unusual delay. Where such Judge is not the District Judge, he shall report such delay to the District Judge in the absence of satisfactory explanation. (Substituted by Notification, dated 4th October 1918.)

XIII. *Nazir's B. Register.*—At the close of each day, every Central and Deputy Nazir shall enter in the Register B the number of processes distributed during the day and the number of peons remaining unemployed after the distribution.

\* \* \* \*

XV. *Procedure in case of arrest or seizure of moveable property.*—When any person has been arrested, or moveable property seized, by a process-server of an outlying Court under a warrant issued by a superior Court, the process-server shall forthwith bring such person or property to the station of such Court and deliver him or it to the Central or Deputy Nazir, as the case may be, provided that this rule shall not apply to property not required to be brought to the court-house.

Such Central or Deputy Nazir shall immediately give the process-server a receipt and send him back to his own Court, and shall produce such person or property before the Court which issued the process.

When money shall have been paid upon any such process, it shall be received by the outlying Munsiff and duly transmitted (by money order at the expense of the party to whom the money is payable) together with the process, to the Court concerned.

It should be distinctly understood both by process-servers and Vakils that payment by them of money to a head clerk will not relieve them of responsibility. Nothing short of payment into Treasury under a chellan on an acquittance signed by the presiding Judge himself can be recognized as an absolute discharge.



XVI. *Remittance of witness batta.*—The total amount of the batta of witnesses, etc., on all the processes issuing to a given Court on any day for service shall be remitted by money order by the Court issuing the processes to the Court to which the processes are sent for service at the same time as the processes are despatched to the latter Court. Any unspent balance in the hands of the Court serving the processes shall be returned to the Court issuing the processes by money order at intervals of a week, (but it may be remitted along with witness batta if such is being remitted at an earlier date); and the presiding Judge, or in the case of a District Court or a Sub-Court, the Sharistadar, shall check and verify from week to week this issue of such money orders: the money order commission in the above cases shall be charged in the contingent bill of the Courts. (Substituted by Notification P. Dis. No. 761 of 1934 dated 1-11-1934).

XVII. *Statement of money orders issued to other courts.*—On or before the 6th of each month, the Court issuing money orders under the preceding rule shall send to each Court to which money orders have been issued in the preceding month a statement showing the number and particulars of the money orders so issued: and it shall be the duty of the presiding officer of the latter Court to see that the amount involved have been received and accounted for.

XVIII. *Emergent Processes.*—The presiding Judge of any Court may, for any sufficient reason, at any hour of the day, transmit a process for emergent execution within the jurisdiction of the head-quarter Munsiff, and it shall be the duty of Central or Deputy Nazir (as the case may be) on receiving such process signed by the Judge, to make immediate arrangements accordingly.

In a case of very special urgency, the presiding Judge may deliver any such process to one of the process servers in attendance on his Court for immediate service or execution.

XIX. *Execution thereof not to be delayed.*—The Deputy Nazirs of outlying Courts shall, on no account delay any process which may be signed by a presiding Judge as emergent. All other processes it shall be lawful for them to keep back for any period, not exceeding three days, which may be necessary to admit of a sufficient number accumulating for a particular neighbourhood.

XX. *Deputation of special process-server from headquarters.*—The presiding Judge of any superior Court may direct, on the application of the party applying for any particular process which would ordinarily be sent for service to an outlying Court, that it be served or executed by a special process server from headquarters, provided that the pay of such process-server at the rate of 8 annas a day for a peon or one Rupee a day for an amin, for the time he is likely to be employed on such duty be paid in advance; and the Judge may, for any sufficient reason, direct that such extra charge be costs of the suit or proceeding.

XXI. *Second peon to be ordinarily deputed to guard judgment-debtors.*—When the Court considers it advisable that a second peon should be deputed to assist the peon having the custody of a judgment-debtor, the pay of both at 8 annas a day for each up to the time fixed for the adjourned hearing should be paid in advance.

Payments under this and the preceding rule shall be made in court fee stamps.

XXII. (1) *Average number of processes to be executed by amins and process-servers—Districtwar.*—The number of amins and peons to be employed shall, from time to time, be determined by the High Court for each district with due regard to the number of processes to be executed and the areas to be served by the several Nazarats and any other special circumstances affecting the number of processes which one officer may fairly be expected to serve in a given time. For the present the number of processes to be executed each year by each amin and peon engaged in execution work shall be regulated in accordance with the following average figures:

[Table of figures omitted.]

(2) *Deputation of process staff for process writing and guard duty.*—The number of amins and peons to be employed under each Nazir and Deputy Nazir, not exceeding the number determined as above for each district shall in like manner, from time to time, be determined by the District Judge subject to the control of the High Court. In addition to the number of amins and peons required for execution work there shall be employed for each Court a sufficient number of Amins to write its processes and three peons to guard and keep order in the Court.

The peons engaged on guard duty shall be told off in rotation for 10 days at a time from the whole number of peons and shall also be available for the service of emergent processes under Rule XVIII.

(3) *Computation of processes.*—In calculating the number of processes, if more than one of the same description have been issued on behalf of the same party at the same time in the same suit or proceeding and executed in the same town or village, the first only shall be reckoned as a full process, and each subsequent set of three or part thereof shall count as but one process, whether executed by one or more amins or peons. Three processes will be counted for each emergent process and one for each day that an amin or peon is in charge of a judgment-debtor or engaged on any special duty.

XXIII. (1) *Monthly report of processes executed.*—Every Central or Deputy Nazir shall, at the end of each month, report to the District Judge the number of processes, calculated as above, which may have been executed by their subordinates within the month; and such report shall show the number declared by each Court to be emergent.

(2) *Strength of Nazarat to be reduced whenever the average number of processes falls short of the minimum.*—The District Judge

shall reduce the number of peons in the Central Nazarat, or any outlying Court, whenever the average number of processes issued to each man (exclusive of those allowed under Rule XXII to be in attendance in the Courts) falls short of the prescribed average by more than ten *per centum*: (Substituted by Notification P. Dis. No. 286 of 1934 dated 28-4-1934)

### CRIMINAL COURTS.

#### FEES FOR SERVICE OF PROCESS.

[364] All payments for the service of processes by the Criminal Courts in the Mufassal subordinate to the High Court, in the case of offences triable by summons case procedure, other than offences for which the Police may arrest without warrant, shall be collected according to the rates fixed in the subjoined schedule :—

#### *Schedule—Criminal Courts.*

- |   |     |     |            |
|---|-----|-----|------------|
| (1) Summons to defendant  | ... | ... | Re. 0 8 0  |
| And for every additional defendant, if applied for at the same time and if resident in the same neighbourhood                                   | ... | ... | Re. 0 4 0  |
| (2) Summons to a witness  | ... | ... | Re. 0 8 0  |
| And for every additional witness, if applied for at the same time and if witness resides in the same neighbourhood                              | ... | ... | Re. 0 4 0  |
| (3) Warrant of arrest   | ... | ... | Re. 0 12 0 |
| (4) Notice (including notice to parties in revision petitions and other applications), order, injunction or warrant, not otherwise provided for | ... | ... | Re. 0 8 0  |

(1) If a process is to be served or executed within a radius of six miles from the Court-house, half the above rates only shall be charged. The Judge of every Court shall determine what villages are within the above radius, and a list of such villages shall be notified in a conspicuous place in the Court house.

(2) When a warrant remains unexecuted for 15 days after its delivery to the officer entrusted with its execution, an additional fee at the same rate shall be levied from the party, at whose instance the warrant was issued for every 15 days or portion of 15 days until return is made, provided that the delay in executing the said warrant is not attributable to the officer of the Court.

(3) This shall not apply to warrants issued under Planters Labour Act (Madras Act 1. of 1903) and forwarded to an officer of the

Labour Department of the United Planters' Association of Southern India under the terms of G. O. No. 101, Judicial, dated the 12th January 1916, and G. O. No. 1074, Home (Miscellaneous) dated the 21st September 1917, as modified from time to time. The above paragraph under sub-rule (2) was added by Dis. No. 1307 of 1918.

(4) This rule applies only to proceedings in non-cognizable cases whether these be calendar cases, appeals or revision cases. No fees for service of processes should be levied in Criminal Revision Petitions in cognizable cases. (High Court Circular Dis. No. 690 of 1926.)

*Note.*—A non-cognizable offence dealt with jointly with a cognizable offence in a single proceeding is a cognizable offence within the meaning of the rule.

[365.] No fees shall be levied on processes issued upon complaints by public servants or officers or servants of a Railway Company acting in their official capacity, which under section 19, clause xviii, of the Court-Fees Act, 1870, are exempt from complaint fees.

Notification No. 27, dated 15th January 1890, published at page 54 of Part I of the *Fort St. George Gazette*, dated 21st January 1890:—

The Government agree with the Board of Revenue in considering that a Review petition presented to a Criminal Court by a servant of the Railway Company and the copy of the Lower Court's Judgment enclosed therewith should be stamped under the Court Fees Act—*Vide* G. O. No. 1442, Revenue, dated 8th June 1907.

The rules provide for the levy of fees only in cases of non-cognizable offences, and there is no authority for the levy of fees in case of cognizable offences.

Article 4 of the schedule appended to the said rules covers all notices not provided for in the other articles of the schedule, and includes notices in applications for transfer of criminal cases under section 528 and in those for revision under section 440 of the Code, for which, therefore, when, they are issued in connection with non-cognizable offences, fees may be levied.

The fee of 12 annas for a warrant of arrest issued under Act XIII of 1859 is leviable in cases in which warrants are executed by British authorities and cases in which they are executed in Mysore lie outside the scope of clause ii, section 20 of Act VII of 1870. The last mentioned class of cases is governed by the arrangement made by the British Government with the Mysore Government and, in the opinion of the High Court, the fee leviable under the Court Fees Act, cannot be collected in these cases by reason of duty of providing escort which falls upon the British Police. The charge of 12 annas in these cases should be discontinued.—(H. C. Pros., 1st May 1891, No. 1913), Act XIII of 1859 is the Workmen's Breach of Contract Act, 1859.

[366.] Subject to the provisions hereinafter contained, the expenses of witnesses will be paid on behalf of Government in the following classes of cases, *viz.* :

- (a) Cases shown in the second schedule of the Code of Criminal Procedure as not bailable.
- (b) Cases in which the prosecution is instituted or carried on under the orders or with the sanction of the Governor-in-Council or of any public servant acting as such.

- (c) Where the witness in question has been compelled to attend by a process issued under section 540 of the Code.
- (d) Cases in which the Court certifies that the attendance of such witness was directly in furtherance of the interest of public justice.

[367.] For the purposes of these rules, Europeans, Anglo-Indians and Indians shall be divided into three classes and the Magistrate before whom they are required to appear, or, in the case of witnesses from the mufassal, the Magistrate of the district from which they come, shall fix the class with due regard to the station in life of each individual.

[368.] The following are the maximum rate which may be awarded to the several classes of witnesses and no expenses in excess of, or other than, those here provided for, shall be allowed :—

Witness.	Class.	Subsistence allowance.	Carriage hire allowable for days of actual attendance.	Travelling expenses if any, incurred.			
				By Rail.	By a public motor service.	By road otherwise than by public motor service.	By sea or canal.
Europeans and Eurasians	1st Class	Rs. 5 per day.	Rs. 3 per day.	1st class fare.	1st class fare.	As. 8 per mile.	Actual expenses of passage.
	2nd "	Rs. 3 per day.	Rs. 2 per day.	2nd class fare.	2nd class fare.	As. 6 per mile.	
	3rd "	Rs. 1-8-0 per day.	Re. 1 per day.	3rd class fare.	3rd class fare.	As. 4 per mile.	
Indians	1st "	Rs. 2 per day.	Rs. 2 per day.	1st class fare.	1st class fare.	As. 6 per mile.	
	2nd "	Re. 1 per day.	Re. 1 per day.	2nd class fare.	2nd class fare.	As. 2 per mile.	
	3rd "	As. 5 per day.	Nil.	3rd class fare.	3rd class fare.	As. 2 per 10 miles.	

The rates mentioned in the above table are those revised by the High Court in Dis. No. 927 of 1917. Even now the rule does not expressly state the allowance and batta that have to be given to a witness residing in the city for his attendance in Court.

If there are only two classes, the first and second class witnesses will be paid higher class fare and third class witnesses the lower class fare.

## HIGH COURT (APPELLATE SIDE.)

*Rules framed under S. 20 of the Court Fees Act; came into force on 1-7-1884 (G. Os. Nos. 1050 & 1486, Judicial, dated 30th April and 16th June 1884 respectively.)*

61. The following fees shall be chargeable for serving and executing processes issued by the High Court of Madras in its Appellate Jurisdiction.

Nature of Process.	Amount leviable.
	Rs. A. P.
For each summons or notice—	
(a) to a single respondent or witness ... ..	1 0 0
(b) to every additional respondent or witness residing in the same village, if the process be applied for at the same time ... ..	0 8 0
(c) for each injunction order and every process not expressly provided for ... ..	2 0 0
(d) for urgent process the fee will be the ordinary fee and half as much again.	

*Note (1)*—If notice is served on a single pleader on behalf of several respondents or on a single guardian on behalf of several minors a single fee is leviable (Notification dated 1-8-31, Fort St. George Gazette, Part II, p. 1428).

*Note (2)*—Scale of process fees levied for services of process in French territory;

The following circular (Dis. No. 2424, dated 23-12-1916) issued by the High Court regulates the fees payable for service of process on persons residing in French territory and has effect from the 1st day of January 1917:—

A uniform fee of four annas (the equivalent of two French fanams) shall be levied towards the cost of service for each summons to be served. Parties at whose instance processes are issued for service in the French territory shall be called on to pre-pay this fee.

62. Whenever in an appeal from the moffusal a respondent who is to be served with notice resides within the local limits of the original jurisdiction of the High Court, service of notice shall be effected through the Sheriff of Madras the fees payable in respect of such process being the same as those prescribed in Rule 61.

62-A. In any appeal, petition, case referred or other matter filed in the High Court before the disposal of the main proceedings in the Lower Court, notice shall be served on the pleader who represents the party in the main proceedings in the Lower Court and such service shall be deemed to be sufficient service on the party who is represented by such pleader. In cases, however, where the parties are not represented by a pleader in the main proceedings, the notice

shall be served on the party direct (Dis. No. 278 of 1928, dated 9-3-1928).

63. The fees for the service of notices on respondents shall be paid in the form of Court-fee labels, and the Court-fee labels shall be attached to a memorandum in Form No. I of Appendix IV (A. S. Rules).

64. When an appellant or his pleader has failed to pay into the Registrar's Office within the prescribed periods the fees required for the service of notices on the respondent, the appeal or appeals shall be posted for the orders of the Court.

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NOTIFICATIONS BY THE BOARD OF REVENUE UNDER THE  
COURT-FEES ACT (VII OF 1870).

*Fort St. George, August 1, 1873.*

(Published on page 1257 of the Fort St. George Gazette, 5th August 1873.)

The following rule framed by the Board of Revenue in exercise of the power conferred by the Court-fees Act, section 23, and approved by the Governor of Fort St. George in Council and the Governor-General in Council, is notified for general information:—

The number of process-servers fixed by the District Collector for his own office and the offices subordinate to him shall be so fixed that the cost of the establishment may be at least covered by the amount of fees levied on the processes served and executed by them. It shall be reported to the Board of Revenue in the first instance for confirmation, and shall be altered from time to time as they may direct, and it shall not be increased without their sanction; but the Collector shall have power to transfer process-servers from one office to another within his jurisdiction as experience may dictate, and, when convenience requires that process issued by one officer shall be served by the process-servers attached to another, they may be served accordingly.

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PROCESS-SERVICE FEES.

<sup>1</sup>114. The Government of India having directed that all collections for the service of processes shall be made by means of stamps, the following rules were issued by the High Court:—

- (i) All collections shall be made by Court-fee labels to be affixed to the application for the issue of process. Such labels will be punched immediately on receipt by the officer appointed to receive the application who will endorse a note on the process that the proper fee for the issue thereof has been levied. In the event of

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<sup>1</sup> Number is that of the standing orders published in the Madras Stamp Manual, 4th edn., p. 340.

the process not being issued the value of the stamps deposited should be refunded in cash to the depositor.

[Proceedings of the High Court, No 840, 22nd April 1873. Boards' Proceedings No. 354, Mis., 26th January 194. Board's Proceedings No. 2145, Mis. 24th October 1904.]

- (ii) In every case in which application is made to a Court for the issue of process beyond the jurisdiction of the Court, there shall be levied the fee that would be leviable for the issue of such process in the Court to which the application is made.
- (iii) When process is forwarded by any Court in British India, or in the State of Mysore, or in the State of Cochin, Banganapalle, Sandur, Pudukottai, or Travancore, or in the territories of His Highness the Nizam to a Court subordinate to this Court (High Court) for execution, such Subordinate Court shall accept the certificate endorsed on the process as sufficient proof that the proper fee for the issue thereof has been paid, and shall deliver such process to the proper officer for service, and shall retransmit the process to the Court by which such process was transmitted to it with a return in the Form No. 10 of Appendix B Schedule I to the Civil Procedure Code (Act V of 1908), and with the endorsement of the process-server, showing if service has been effected, in what manner it has been effected; and if service has not been effected the reason why it has not been effected, and such endorsement shall be verified by oath or affirmation of the process-server.  
[Fort St. George Gazette, Part I, page 225 of 1882.]
- (iv) No fees shall be levied on processes issued upon complaints by public servants or officer or servants of a Railway company acting in their official capacity, as under section 19, clause xviii of the Court-Fees Act 1870, these are exempt from complaint fees.
- (v) Processes issued under the Revenue Recovery Act, Madras, No. II of 1864, have been specially excluded from the list of processes which require to be stamped under the Court-Fees Act.
- (vi) For the schedules of fees chargeable for serving and executing processes issued by Civil, Revenue and Criminal Courts, *Vide* pages 280 to 281 and 297 of the Madras Stamp Manual, 4th edn., Vol. I, Pages 819, 820 and 830 *supra*.



## APPENDIX IV.

## DENOMINATION AND KIND OF STAMPS.

## A—RULES MADE BY THE GOVERNMENT OF INDIA.

## NOTIFICATIONS OF THE GOVERNMENT OF INDIA UNDER THE COURT-FEES ACT (VII OF 1870).

*Calcutta, the 20th March 1885.*(Published on page 213 of the *Gazette of India* 1885, Part I.

1 No. 1522.—In exercise of the powers conferred by section 26 of the Court Fees Act, 1870, the Governor-General in Council directs that the additional court-fee payable under section 19-E of the said Act on Probates and Letters of Administration shall be denoted either—

- (a) by impressed and adhesive stamps in the manner prescribed in Notification No. 361 of 18th April 1883 ; or
- (b) wholly by adhesive stamps of the kind described in clause I of Notification No. 361 of 18th April 1883.

*Simla the 18th April 1883.*(Published on page 189 of the *Gazette of India* 1883, Part I,

2 No. 361.—In exercise of the powers conferred by sections 26 and 27 of the Court-Fees Act, 1870, and of all the other powers enabling him in this behalf ; and in supersession of notification by the Government of India in the Financial Department No. 1520, dated 5th March 1875, and all other notifications on the subject, the Governor-General in Council is pleased to issue the following directions :—

I. When in any case the fee chargeable under the said Act is less than Rs. 10, such fee shall be denoted by adhesive stamps only. Such adhesive stamps shall either be the adhesive stamps a of the size and pattern introduced in 1883 bearing the words "Court-fee," and containing three lines in the middle with the Queen's head and the value printed on the left side, a or adhesive stamps of any different shape, size or pattern, bearing the words "Court-Fees" which may hereafter be issued for use in supersession of, or in addition to, the adhesive stamps now in use.

II. When in any case the fee chargeable under the said Act amounts to or exceeds Rs. 10, such fee shall be denoted by impressed stamps bearing the words "Court-Fees," adhesive stamps being only employed to make up fractions of less than Rs. 10.

1 This is superseded in Madras by Madras Government Notification dated 17-3-1929, for which see *infra*.

2 This is superseded in Madras by Madras Government Notification dated 15-2-1924 for which see *infra*.

(a—) Substituted by Government of India Notification No. 1494-S. R., dated 9th March 1895, *Port St. George Gazette*, 9th April 1895, Part I, page 431. This order came into force on the 1st July 1895. See at page 837 *infra*.

III. If in any case the amount of the fee chargeable under the said Act involves a fraction of an anna, such fraction shall be remitted.

IV. This notification shall take effect on and after the 1st June 1883.

*Simla the 29th March 1895.*

(Published on page 265 of the *Gazette of India 1895* Part I.)

No. 1494-S. R.—In exercise of the power conferred by section 26 of the Court-Fees Act, 1870 (VII of 1870) and in supersession of so much of paragraph 1 of the Notification in this Department No. 361, dated the 18th April 1883, as authorised the use of the adhesive stamps, bearing the words "Court-fees," in use on the date of the notification for denoting the fee chargeable under the said Act, when in any case the fee is less than Rs. 10 the Governor-General in Council is pleased to direct that in such cases the adhesive stamps to be used shall, with effect, from the 1st July 1895, be adhesive stamps of the size and pattern introduced in 1883 bearing the words "Court-fee" and containing three lines in the middle, with the Queen's head and the value printed on the left side."

*Simla, the 23rd August 1895*

(Published on page 722 of the *Gazette of India 1895* Part I.)

<sup>1</sup> No. 4070-S. R.—In exercise of the power conferred by section 26 of the Court-Fees Act, VII of 1870, and in supersession of the Notification in this Department No. 1678, dated the 18th July 1873, the Governor-General in Council is pleased to direct that the fees referred to in the first paragraph of section 3 of the said Act shall, with effect from the 1st September 1895, be denoted by adhesive stamps of the size and pattern introduced in 1883, bearing the words "Court-Fee" and containing three lines in the middle with the Queen's head and the value printed on the left side and the word "Service" overprinted on the stamps.

*Simla, the 4th August 1896.*

(Published on page 604 of the *Gazette of India 1896*, Part I.)

<sup>1</sup> No. 3318-S. R.—In exercise of the powers conferred by section 26 of the Court-Fees Act (VII of 1870), and in continuation of the Notifications of the Government of India in the Finance and Commerce Department, Nos. 361 and 4070-S. R., dated the 18th April 1883, and the 23rd August 1895, respectively, the Governor-General in Council is pleased to direct that the fees referred to in the first paragraph of section 3 of the said Act may be denoted by adhesive stamps bearing the Queen's head in a circle in the centre and the value printed on each side thereof, and overprinted with the words "High Court Service."

1. These two Notifications have been superseded in Madras by Madras Government Notification dated 27-2-1929, for which see *infra*.

## B—RULES MADE BY THE MADRAS GOVERNMENT.

*Rules for the stamps to be used.*

*The 25th February 1924.*

I.—In exercise of the powers conferred by section 26 of the Court-Fees Act, 1870 (VII of 1870), as amended by the Devolution Act, 1920 (XXXVIII of 1920) and the Madras Court Fees (Amendment) Act, 1922 (Madras Act V of 1922) and all other powers enabling him in this behalf and in supersession of the notification of the Government of India No. 1522, dated 20th March 1885, published on page 213 of Part I of the *Gazette of India*, dated 21st March 1885 the Governor in Council is hereby pleased to direct that the additional Court-fee payable under section 19-E of the first mentioned Act on Probates or Letters of Administration shall be denoted either—

(a) by impressed and adhesive stamps in the manner prescribed in the notification of the Local Government in the Revenue Department, No. I, dated 25th February 1924, or

(b) wholly by adhesive stamps of the kind described in clause 1 of the said notification of the Local Government.

[B.P.R. Mis. 99, 8th April 1929.]

*Adhesive stamps and Impressed stamps when to be used respectively.*—In exercise of the powers conferred by sections 26 and 35 of the Court-Fees Act, 1870, as amended by Act XXXVIII of 1920, and the Madras Court-Fees (Amendment) Act, 1922, and all other powers enabling them in this behalf and in supersession of the notification of the Government of India No. 361, dated 18th April 1883, published at page 307 of the *Fort St. George Gazette*, Part I, dated 8th May 1883, the Local Government are pleased to issue the following directions :—

(i) When in any case the fee chargeable under the said Act is less than Rs. 25, such fee shall be denoted by adhesive stamps only. Such adhesive stamps shall either be the adhesive stamps of the size and pattern introduced in 1883 bearing the words "Court-Fee," and containing three lines in the middle with the King's head and value printed on the left side, or adhesive stamps of any shape, size or pattern bearing the words "Court-Fees" which may hereafter be issued for the use in supersession of or in addition to, the adhesive stamps now in use.

(ii) When in any case the fee chargeable under the said Act amounts to or exceeds Rs. 25, such fee shall be denoted by impressed stamps bearing the words "Court-Fees" adhesive stamps being only employed to make up fractions of less than Rs. 25.

(iii) If in any case the amount of the fee chargeable under the said Act involves a fraction of an anna, such fraction shall be remitted.

(iv) This notification shall come into force on the 1st March 1924, from which date adhesive labels of the value of Rs. 10, 15 and 20 will be introduced. [Notification at pp. 236-7, Part I of the *Fort St. George Gazette*, dated 4th March 1924.] (G. O. Mis. No. 297, Revenue, dated 25th February 1924.)

*The 27th March 1929.*

II. In exercise of the powers conferred by section 26 of the

(1) No. 4070, S. R., dated 23rd August 1895, published on page 722 of Part I of the *Gazette of India*, dated 24th August 1895,

(2) No. 3318 (S. R.), dated 4th August 1896 published on page 604 of the *Gazette of India*, dated 8th August 1896.

Court-Fees Act, 1870 (VII of 1870) as amended by the Devolution Act, 1920 (XXXVIII of 1920) and the Madras Court-Fees (Amendment) Act, 1922 (Madras Act V of 1922) and all other powers enabling him in this behalf and in supersession of the marginally noted notifications of the Government of India, the Governor in Council is hereby pleased to direct that the fees referred to in the first paragraph of section 3 of the first mentioned Act shall be denoted

(i) by adhesive stamps of the size and pattern introduced in 1883, bearing the words "Court-fee" and containing three lines in the middle with the King's head and the value printed on the left side and the word "Service" over-printed on the stamps, or

(ii) by adhesive stamps bearing the King's head in a circle in the centre and the value printed on each side thereof and over-printed with the words "High Court Service."

[B.P.R. Mis. 99, 8th April 1929.]

*Notification regarding the use of stamps.*

In exercise of the powers conferred by section 27 of the Court-Fees Act, 1870, and in modification of the notification published at page 847 of the *Fort St. George Gazette*, dated the 30th April 1872, and of all other notifications on the subject, the Right Honourable the Governor in Council is pleased to issue the following rules:—

1. When in the case of fees amounting to less than Rs. 25 the amount can be denoted by a single adhesive stamp, such fees shall be noted by a single adhesive stamp of the required value. But if the amount cannot be denoted by a single adhesive stamp, or if a single adhesive stamp of the required value is not available, an adhesive stamp of the next lower value available shall be used and the deficiency shall be made up by the use of one or more additional adhesive stamps of the next lower values, which may be required to make up the exact amount of the fee.

NOTE.—"The stamp used to denote any fee under the Court-Fees Act shall be a stamp of value equal to the fee required, or in cases where there is no stamp of the exact value, then the first stamp shall be of the next lower available value and the balance shall be made up by stamps of smaller value similarly selected." (Notification dated 20-4-72 page 847 of Part I of the *Fort St. George Gazette* dated 30-4-72).

2. When in the case of fees amounting to or exceeding Rs. 25, the amount can be denoted by single impressed stamp, the fees shall be denoted by a single impressed stamp of the required value. But if the amount cannot be denoted by a single impressed stamp, or if a single impressed stamp of the required value is not available, an impressed stamp of the next lower value available shall be used, and the deficiency shall be made up by the use of one or more additional impressed stamps of the next lower values available which may be required to make up the exact amount of the fee in combination with adhesive stamps to make up fractions of less than Rs. 25.

3. Any adhesive stamps which may be used under Rule (2) shall be affixed to the impressed stamp of the highest value employed in denoting the fee.

4. When two or more impressed stamps are used to make up the amount of the fee chargeable under the Court Fees Act, a portion of the subject-matter shall be written on each impressed stamp so used, and the writing on each stamp shall be attested by the signature of the person or persons executing the document.

NOTE.—The following *executive instructions* have been issued by the Local Government:—When two or more impressed stamps are used to make up the amount of the fee chargeable under the Court Fees Act, a portion of the subject-matter shall *ordinarily* be written on each stamped sheet. Where this is impracticable or seriously inconvenient the document shall be written on one or more sheets bearing impressed stamps of the highest value, and the remaining stamps shall be punched and cancelled by the Court or its chief ministerial officer and attached to the grant, a certificate being recorded by the Court or its chief ministerial officer on the face of the first sheet of the document to the effect that the full Court-fee (viz., Rs. ....) has been paid in stamps. The writing on each stamped sheet shall be attested by the signature of the person or persons executing the documents (*G. O. No. 17, Revenue, dated 5th January 1906.*)

5. When one or more impressed stamps used to denote a fee are found insufficient to admit of the entire document being written on the side of the paper which bears the stamp, so much plain paper may be joined thereto, as may be necessary for the complete writing of the document, and the writing on the impressed stamps and on the plain paper shall be attested by the signature of the person or persons executing the document.

6. In the blank space left in the adhesive stamps, the vendor shall insert the name of the purchaser, the date of sale and his own ordinary signature. (*G. O. No. 635, Revenue, dated 19th May 1883, and H. C. Pros. No. 2226, dated 10th July 1883, published at page 322 of Part I of the Fort St. George Gazette, dated 22nd May 1883 as amended by G. O. No. 297, Revenue, dated 25th February 1924*)

*Fort St. George, 15th February 1872.*

(Published on page 405 of the *Fort St. George Gazette*, dated 28th February 1872.)

Under the authority vested in him by section 27, Act VII of 1870 (Court-Fees), the Right Honourable the Governor in Council prescribes the following rule for general observance:—

Section 27.

*Rule.*

When adhesive stamps alone are used to denote any fee chargeable under the Court Fees Act, the stamp used shall be a stamp of value equal to the fee required.

In cases when there is no stamp of the exact value, then the first stamp shall be of the next lower available value, and the margin or balance shall be made up by stamps similarly selected.

*Note* —For Rules made in the other Provinces, see the Rules and Orders of those Provinces.

RULES RELATING THE USE OF STAMPS IN COURT OF  
SMALL CAUSES, MADRAS.

NOTIFICATION.

In exercise of the powers conferred by section 27 of the Court-Fees Act, 1870 (VII of 1870) and all other powers thereunto enabling and in supersession of the rules published with Judicial Department Notification published at pages 404-405 of the *Fort St. George Gazette*, dated 28th February 1872, the Governor in Council is hereby pleased to make with effect from 1st July 1932 the following rules for regulating the use of stamps in payment of fees chargeable in the Court of Small Causes, Madras.

*Rules.*

- I. (a) Stamps required in payment of fees in the Court of Small Causes, Madras, shall be furnished by the party liable to pay such fees.

(b) There shall be affixed to every plaint  
Mode of using stamps. stamps of the value equivalent to the fees payable thereon.

- (c) Any party requiring the issue of any warrant, subpoena, second summons or any other process not being original summons shall produce an application in writing entitled in the cause or matter to which it relates and shall affix thereto stamps of the value equivalent to the fee payable for such process. Such application shall state briefly the nature of the process required and shall be filed in the appropriate office of the Court.

- II. In order that the contents of a document may not be defaced or obscured, the stamp affixed to it shall be of  
Number of stamps. an amount corresponding, as nearly as practicable, with the amount of the stamps which such document requires. It shall be in the discretion of the Head Clerk or other officer empowered by the Chief Judge to receive plaints and other documents, to refuse to accept any plaint or document which bears an unnecessary number of stamps.

- III. Stamps will be sold by a salaried vendor appointed for the purpose, in a stall or office situate within the premises of the Court and also by all other  
Provision for sale of stamps. licensed vendors authorized to sell Court-fee

stamps. The salaried vendor's stall or office shall be open daily for the sale of stamps on all days (except on such days as the Court shall not be sitting) between the hour of 10 a.m. and 5 p.m.

IV. (1) A bound register in the appended form called the "refund certificate book" shall be maintained in each of the Courts. The Bench Clerk of the Court ordering refund of half cost shall prepare without delay the refund certificate. Such certificate shall, after being checked and signed by the Head Clerk and the Registrar (or a Judge), be delivered to the party concerned by a clerk of the Court. Such clerk shall maintain a register showing the delivery of the refund certificates of all the Courts and he shall forward the duplicate of every certificate delivered to the salaried vendor.

(2) The amount mentioned in each refund certificate shall be paid to the party concerned by the salaried vendor who shall be provided by the Local Government with a permanent advance for the purpose.

(3) The salaried vendor shall, from time to time, draw from the Deputy Collector of Madras the amount paid on refund certificates on delivering to him the certificates so paid and such certificates shall be kept by the Deputy Collector as vouchers for the amount disbursed by him to the salaried vendor.

(4) At the end of each month the Registrar shall forward to the Collector of Madras a memorandum showing the number of refund certificates issued during the month and the amount of each such certificate.

V. It shall be the duty of the Head Clerk or other officer appointed by the Chief Judge to receive plaints and other documents to see that the blank space in any plaint or document is not unnecessarily covered with stamps, that stamps of the proper description and value are affixed and that the stamps are subsequently punched and cancelled properly before action is taken on such plaint or document. A receipt or memorandum for every plaint or document presented shall, if so required, be granted to the party concerned.

VI. These rules shall not apply to fees payable to any Advocate or Attorney of the High Court in any case certified, or to the costs of any reference to the High Court.

[G. O. 2236, Law (General), 6th June 1932; B. P. R. Mis. 175, 18th June 1932.]

## APPENDIX V.

### CANCELLATION OF STAMPS.

#### A—RULES MADE BY THE MADRAS GOVERNMENT.

**359.** [277.] Under Act VII of 1870, section 30, court-fees labels are cancelled by punching out the figurehead, but this does not perhaps afford sufficient protection, and pending further consideration on the subject, the Governor-General in Council directs that the Record-keeper of every court shall, when a case is decided and the record consigned to his custody, punch a second hole in each label distinct from the first, and note the date of his doing so at the same time. The second punching should not remove so much of the stamp as to render it impossible or difficult to ascertain its value or nature. G. I. Resolution, No. 1763, Financial, dated 24th July 1873, G. O. No. 1095, Financial, dated 5th August 1873.

**360.** [278.] The attention of all courts and officers having to deal with court-fees stamp is called to the importance of punching out from the stamps the figurehead and destroying the piece punched out before taking action upon the documents to which the stamps may be attached. The court or office issuing copies, certificates, or other similar documents liable to stamp duty, shall, before issue, cancel the labels affixed to them by punching out a portion of the label in such a manner as to remove neither the figurehead, nor the part of the label upon which its value is expressed. As an additional precaution, the signature of the officer attesting the document with the date, should be written across the label and upon the paper on either side of it as is frequently done by persons signing stamped receipts. G. O. No. 263, Judicial, dated 14th February 1874; G. I. Resolution No. 3373, Financial, dated 24th September 1875; G. O. 2171, Judicial, dated 7th October 1873.

The above directions apply only to adhesive labels used under the Court-Fees Act. Impressed stamps used for denoting court-fees need not be cancelled or punched otherwise than as required by section 30 of the Court-Fees Act.

#### CIRCULAR ORDERS.

##### (I) *Cancellation of stamps.*

(1) *Check of stamps on papers received by chief ministerial officer and their punching under his immediate supervision.*

All applications, petitions, etc., intended for presentation to the lower Court shall be presented to the Court itself or to its chief ministerial officer, whose duty it will be to examine and punch the stamps, and who will be held responsible for the receipt of any stamps which have previously been used.

The Governor in Council resolves to direct all District Judges to make it a rule, for strict observance in the Courts within their



jurisdiction, that the Sarishtadar in the Superior Courts, and Head Clerk in the District Munsif's Courts, shall personally attend to, and be personally responsible for the strict fulfilment of, the duty of receiving documents to be filed, examining the correctness of the stamps attached thereto, and immediately cancelling such stamps, as required by section 30 of the Court-Fees Act. There will be no objection to the ministerial officers named employing trustworthy subordinates to do the mere manual work of cancelling the stamps as proposed by some of the Judges; but it will be on the distinct understanding that the Sarishtadars or the Head Clerk, as the case may be, will be personally responsible for the due execution of the duty and for any defalcation or fraud that may occur in connexion with it. The Government expect District and Subordinate Judges and District Munsifs so to inspect and test the work of their officers from time to time as to ensure attention to the duty, and to limit opportunities for fraud (*G. O. No. 1914, Madras, dated 16th August 1877*).

(2) *Cancellation of adhesive Court-fee labels to prevent re-user thereof.*

The Governor-General in Council has recently had under consideration the best method of cancelling adhesive Court-fee labels so that they may not be fraudulently used again.

(a) *Second punching thereof by the Record-keeper.*—Under Act VII of 1870, section 30, court-fee labels are cancelled by punching out the figurehead, but this does not perhaps afford sufficient protection and, pending further consideration of the subject, the Governor-General in Council directs that the record-keeper of every Court shall, when a case is decided and the record consigned to his custody, punch a second hole in each label distinct from the first and note the date of his doing so at the same time. The second punching should not remove so much of the stamp as to render it impossible or difficult to ascertain its value or nature. (*G. I. Resolution, 24th July 1873, G. O., Madras, No. 1095, dated 5th August 1873*).

The directions in *G. I. Resolution, 24th July 1873*, apply only to adhesive label used under the Court-Fees Act. Impressed stamps used for denoting court-fees need not be cancelled or punched otherwise than as required by section 30 of the Court-Fees Act. (*G. O. No. 2509, dated 20th September 1883*.)

The Governor-General in Council observes that, under the provisions of the Court-Fees Act, the cancellation of stamps must be effected by the Court or Office receiving the document to which a stamp has been affixed.

(b) *Labels affixed to certified copies, certificates, etc., should be cancelled before issue*—His Excellency in Council is not

satisfied that the rules at present in force provide adequate security for the stamp Revenue in the case of labels affixed to certified copies of papers which are frequently only imperfectly obliterated by the Court issuing these documents.

In supersession, therefore, of existing orders on the subject, the Governor-General in Council is pleased to direct that the Court or Office issuing copies, certificates or other similar documents liable to stamp duty, shall, before issue, cancel the labels affixed to them by punching out a portion of the label in such a manner as to remove neither the figurehead, nor that part of the label upon which its value is expressed. As an additional precaution the signature of the officer attesting the document with the date, should be written across the label and upon the paper on either side of it as is frequently done by persons signing stamped receipts. (*G. I. Resolution, No 3373, dated 24th September 1875; G. O., Madras, No. 2171, dated 7th October 1875.*)

- (c) *Second punching thereof by the Court on receiving them and third punching on being consigned to the record.*—The Resolutions of the Government of India, embodied in Government Orders, Madras, No. 1095, dated 5th August 1873, and No. 2171, dated 7th October 1875, (paragraphs 1 and 3 *supra*) provide that the Courts issuing the certified copy or certificate should, before issue, cancel the labels affixed thereto by punching out a portion of them but not the figurehead or that part upon which their value is expressed, the attesting officer also writing his name and date across them, and it is the Court in which such certified copy or certificate is produced, that should require the receiving officer at once to punch out the figurehead as directed by Section 30 of the Court Fees Act before the document is filed or acted on. When the copy or certificate is, with the record of the case in which it is filed, transferred to the custody of the record-keeper, he should punch a third hole in each label distinct from the previous two holes and at the same time, note the date of his doing so. He need not necessarily write across the stamp, though it will be well to do so, if there is still room. (*H. C. Circular No. 894-A, dated 13th March 1884.*)

(3) *Record-keeper to examine papers as soon as they are consigned to his custody and on each occasion on which they are received back after being taken for reference.*—On receiving stamped documents into the record-room, the record-keeper shall examine the stamps, report if they are incorrect, note any erasures or suspicious appearance they may present, and be held responsible for their safe custody thereafter. If a record or any document forming part of a record is taken from the record-room for any purpose, it shall be his duty to denote to whom,

and for what purpose, it has been delivered, and on its return, to examine it and ascertain if it be in the same condition in which it was issued from his office, and, if it be not in the same condition, to bring the circumstance to notice. (*H. C. Circ. No. 2131, dated 13th October 1881.*)

(4) *Stamps affixed to documents to be punched before any action is taken.*—Standing Orders Nos. 86 and 88 in Section V of the Stamp Manual will be amended as shown in the Annexure to this order. The Board of Revenue is requested to incorporate the provisions of Chapter VII, Section V of the Stamp Manual as now amended in the place of note (3) to paragraph 6 of its Standing Order No. 172.

His Excellency, the Governor in Council, desires to draw the attention of officers in all departments to the provisions of these Standing Orders. It should specially be noted that, as laid down in Standing Order No. 88, it is the duty of every officer before whom a document bearing an adhesive stamp label is produced, to see that it has been properly punched and cancelled before any action is taken on it. The rule laying down that every clerk who submits for orders a document bearing an adhesive stamp, shall be responsible for seeing that it has been duly punched, should be strictly enforced. There is reason to believe that serious loss of revenue is caused by the improper use a second time of adhesive stamps, which have not been duly cancelled on first presentation. (*G. O. No. 2109, Revenue, dated 22nd June 1910.*)

#### *Annexure.*

*Standing Order No. 86 (now No. 83).*—“Every officer presiding over a Court or Office and receiving a document liable to stamp duty under the Court-Fees Act and stamped with adhesive stamps should, after satisfying himself that the document is properly stamped, see that a date stamp is applied to it in such a manner as to cover or touch some part of the stamps, but not in such a way as to obliterate the entries thereon or to render the detection of forgeries more difficult. The stamp should then be cancelled by punching out the figurehead. The punch, used for this purpose should be large enough completely to remove the figurehead.

(5) *Documents insufficiently stamped to be returned without being punched.*—If the document is insufficiently stamped the date stamp should not be applied to the stamps on it, nor should the stamps be cancelled by punching out the figurehead. The document should be returned to the parties concerned for re-submission properly stamped.

[Stamps affixed to documents in excess of legal requirements should be punched. No refund or renewal can be granted where the amount of the excess value is less than one rupee. In cases where the value of excess stamps is not less than one rupee, the party concerned will be allowed refund of their value after deducting one anna in the rupee. He should be given a certificate (Form LXXXVI.

Appendix II to the Manual (now Form No. L) to the effect that he is entitled to receive back their value less discount within thirty days at a specified treasury, an advice (Form LXXXVIII now Form No. L) being at the same time sent to the treasury officer. Stamps themselves should, on no account, be removed from the documents and refunded to the parties. In making payments, the treasury officer should, as far as possible, follow the instruction in Standing Order 101 (now Standing Order No. 99) (G. O. No. 270, *Separate Revenue, dated 6th April 1916*.)

In order to prevent fraud on the part of ministerial servants in a Court or Office who might connive at old punched adhesive stamps being re-introduced, the record-keeper of every Court or office shall, as soon as the record is made over to his custody, punch a second hole in each adhesive label with a wad-cutter punch of diamond shape before putting the document into the record-room. This second punching should not remove so much of the stamp as to render it difficult to ascertain its value or nature. Impressed stamps used for denoting court-fees need not be cancelled or punched otherwise than as required by Section 30 of the Court-Fees Act."

*Standing Order No. 88 (now No. 85)*—"It is the duty of every officer to whom a document liable to stamp duty under the Court-Fees Act is submitted for orders to see that any adhesive stamps thereon have been properly punched. The section head or other responsible ministerial officer submitting papers for orders shall see that all adhesive stamps therein contained have been punched and defaced as directed in Standing Order No. 86 (now Standing Order No. 83) and any section head or other ministerial officer submitting a document bearing an unpunched adhesive stamp shall be required to pay the value of the stamps.

Officers receiving documents liable to stamp duty under the Court-Fees Act should also look at the date of sale recorded on adhesive stamps and, if they find that the date of sale as recorded on the stamp is suspiciously remote, they should enquire into the history of the stamp."

(6) *Stamps in excess of legal requirement—Punching of—Refund of the excess value.*—In supersession of Circular Dis. No. 1921 of 1914, dated the 17th November 1914, the High Court directs, with reference to G. O. No. 270, *Separate Revenue, dated the 6th April 1916*, that all stamps affixed to documents received in Courts, including those in excess of legal requirements, should invariably be punched. The party who has affixed stamps in excess will be allowed a refund of their value, less one anna in rupee, except in cases in which the amount of the excess value is less than a rupee. Stamps affixed in excess should on no account be removed from the documents and returned to the party; but the presiding officer of the Court will give him a certificate in Form No. LXXXVII, Appendix II to the Madras Stamp Manual, (now Form No. L) to the effect that he is entitled to

receive back their value less discount within 30 days at a specified treasury and at the same time send an advice in Form No. LXXXVII (now Form No. L) to the treasury officer. The certificate will become null and void after the expiry of the 30 days and refund will not be admissible thereafter.

The presiding officer of the Court will note under his initials the date and number of the certificate on the stamps affixed in excess, so as to prevent fraud. (*H. C. Dis. No. 1320, dated 22nd July 1916.*)

*(II) Reporting cases of infringement of the rules for the sale of stamps.*

All officers presiding over Civil Courts are requested to bring to the notice of the Revenue Divisional Officers cases which may come to their notice of infringement of Rule 15 of S. O. No. 75 at page 291 of the Stamp Manual (Edition 1902) (R. 11 of the rules published at p. 260 of the Stamp Manual 4th edn., read with Standing Order No. 76 published at p. 320) prohibiting a licensed vendor from attempting to supply a stamp higher in value than the highest he is authorized to sell by the sale of a number of impressed sheets of lower value. They are not expected to hold any inquiry as to whether the rule has been actually infringed or not, but merely to give information of the cases to the Revenue Department with particulars such as the serial numbers of the stamps, their value, date of their sale, and name of vendor and purchaser appearing on the stamps themselves. (*H. C. Dis. No. 1096, dated 19th June 1916.*)

For the Standing Orders of the Board of Revenue as regards checks against fraud, see pp. 328-330 of the Madras Stamp Manual 4th edn.

**RULES MADE BY THE HIGH COURT OF LAHORE.**

*Rules made by the High Court under the power conferred by section 30 of the Court-fees Act, VII of 1870, and all other powers in that behalf, regulating the cancellation of court-fee stamps.*

*Rules.*

1. The cancellation of court-fee stamps shall be effected,—
  - (a) when a document bearing a court-fee stamp is received by a Court competent to receive the same;
  - (b) when a court-fee stamp is paid in on account of process fee;
  - (c) when a court-fee stamp is affixed to a document issued by any Court or office;
  - (d) when the record of a case in which court-fee stamps have been filed is finally made over to the Record-keeper for safe custody.
2. Court-fee stamps falling under clauses (a) and (b) of the foregoing rule shall be cancelled immediately on receipt of the

document or stamp, by such officer as the Court may from time to time appoint, in writing, in the manner prescribed by section 30 of the Court-fees Act. As an additional precaution, the cancelling officer should affix his signature, and the date, across each label, at the time of cancellation, in durable ink.

3. In regard to stamps on documents falling under clause (c) of rule 1, the Government of India have directed in Financial Department resolution No. 3373, dated the 24th September 1875, that the Court or office *issuing* copies, certificates, or other similar documents liable to stamp duty under the Court-fees Act shall, *before issue*, cancel the labels affixed to them by punching out a portion of the label in such a manner as to remove neither the figure-head nor that part of the label on which its value is expressed, and that, as an additional precaution, the signature of the officer attesting the document, with the date, shall be written across the label, and upon the paper on either side of it.

4. The rules for the cancellation of court-fee stamps by the Record-keeper are contained in a resolution of the Government of India in the Financial Department, No. 1763, dated the 24th July 1873, in which it is ordered that the Record-keeper of every Court shall, when a case is decided and the record consigned to his custody, punch a second hole, or in the case of stamps falling under clause (c), rule 1, a third hole, in each label, distinct from the first, *and note the date of doing so at the same time*. Special attention is requested to words in italics, as the direction therein contained is always not complied with. The Record-keepers punching should not remove so much of the label as to render impossible or difficult to ascertain its value or nature. From the annexed copy of a resolution of the Government of India, No. 3047, dated 5th September 1883, it will be seen that these directions apply only to *adhesive labels* used under the Act, and not to *impressed stamps* which need not be punched a second time.

*Copy of a resolution of the Government of India in the Department of Finance and Commerce, No. 3047, dated Simla, the 5th September 1883.*

*Resolution.*—It was directed in Financial resolution No. 1763, dated 24th July 1873, that the Record-keeper of every Court shall, when a case is decided and the record consigned to his custody, punch a second hole in each label distinct from the first which is prescribed by section 30 of the Court-fees Act, and note the date of doing so at the same time.

These directions apply only to adhesive labels used under the Court-fees Act. Impressed stamps used for denoting court-fees need not be cancelled or punched otherwise than as required by section 30 of the Court-fees Act.

5. Whenever the custody of a record containing court-fee stamps is transferred from one official to another before final disposal,

the receiving officer shall examine the court-fee stamps in the record and either certify on the index of papers that they are complete, or immediately bring to notice any deficiency, as the case may require.

6. Record-keepers will be held personally responsible that the stamps appertaining to the records under their charge are complete, and that they have been duly cancelled in accordance with these instructions. Should a record be sent into the record-room in which the stamps are incomplete or not duly cancelled, the Record-keeper shall report the circumstance at once to the head of the office, and shall defer entering the case in its appropriate register until orders have been passed in the matter.

7. When a record containing court-fee stamps is taken out of the record room for any purpose, each official through whose hands it passes must note on the index of papers or on the list of records where such a list is with the record, that he has examined the court-fee stamps in the record, and that they are complete, or, if they are not complete, at once report the fact for orders.

*Note.*—1. To facilitate the examinations required by the above rules a column has been inserted in the index of papers attached to each record which shows at a glance what papers in the record bear court-fee stamps, and the number and value of the stamps attached to each of such papers.

2. These rules do not supersede in any way the instructions contained in paragraph 49 of the Punjab Stamp Manual, Edition of 1913.

3. Paragraph 50 of the Punjab Stamp Manual, Edition of 1913, contains further instructions with regard to fraudulent practices in respect of court-fee labels and is added here for the information of the Courts:

“50. Further precautions against the fraudulent use of court-fee labels a second time were, under the orders of Government, prescribed by the Superintendent of Stamps in his Circular No. 1, dated 24th April 1877, of which the effective portions are extracted below. It is to be noted that at that time adhesive labels alone were used to denote fees of Court :—

“The first and most important point to be guarded against is the re-use of stamps which have once been used; such stamps may have been punched, or they may have been left unpunched, and passed into the record-office and there removed. In the case of a removed stamp that has been punched once, it is clear that its use a second time can only be effected by the dishonesty of the native subordinate who, in the first instance, receives the documents presented by suitors. In the case of a removed stamp that has not been punched, it is possible that it may have been so little injured in the removal as to be used a second time without detection, unless the stamps be

closely examined ; and it may pass undetected, either from dishonesty or from want of vigilance on the part of the native subordinate. In order effectually to prevent frauds of this nature, it is absolutely necessary that the native subordinate whose duty it is to see that the full fee has been affixed in each case and to punch the stamps and to record orders, should be made to stand or sit within full view of the officer and in that position to perform his task, certifying on each petition that the full fee has been affixed, and all stamps have been punched. It is of the utmost importance that this subordinate, be his position ever so high on the establishment, should be allowed no time or opportunity for tampering with the stamps.

“When files of decided cases are sent to the record-room, the Record-keeper should be required, without any loss of time, to examine the stamps and punch a second hole in each stamp, affixing the date on which he does so.

“The last precaution against the fraudulent re-use of court-fee stamps lies in the periodical examination of files by the Superintendent of Stamps, and by his personal Assistant of files in the record-room of all Courts and offices where stamps are filed or kept.”

8. The following executive instructions to be observed when a document is written upon two or more impressed stamps which are used to make up the fee chargeable under the Court-Fees Act, VII of 1870, have been issued by the Financial Commissioner :—

When two or more impressed stamps are used to make up the amount of the fee chargeable under the Court-Fees Act, a portion of the subject-matter shall ordinarily be written on each stamped sheet. Where this is impracticable or seriously inconvenient, the documents shall be written on one or more sheets bearing impressed stamps of the highest value, and the remaining stamps, shall be *punched and cancelled by the Court* and filed with the record, a certificate being recorded by the Court on the face of the first sheet of the document to the effect that the full court-fee has been paid in stamps. The writing on each stamped sheet shall be attested by the signature of the person or persons executing the documents.

*Note.*—As regards the Rules made by the other High Courts, See the Rules and Orders of the respective High Courts.

## APPENDIX VI.

### RULES FOR THE REFUND OF COURT-FEE STAMPS.

#### A—RULES FRAMED BY THE GOVERNMENT OF INDIA.

*Calcutta the 11th January 1888, No. 132.*

(Published on page 155 of the *Fort St. George Gazette*, Part I, 28th February 1888.)

*Read.*—Resolution of the Government of India No. 2345, dated the 26th December 1884.



Letter to the Government of Bombay, No. 230, dated the 20th April 1885.

Letter from the Government of Madras, No. 953, dated the 30th September 1887.

*Resolution.*—In supersession of all existing orders on the subject, the Governor-General in Council is pleased to authorize the refund of the value of impressed Court-fee stamps and of Court fee adhesive labels in accordance with the following rules:—

1. (a) When any person is possessed of impressed Court-fee stamps for which he has no immediate use, or which have been spoiled or rendered unfit or useless for the purpose intended, or
- (b) When any person is possessed of two or more (or, in the case of denominations below Rs. 5, four or more) Court-fee adhesive labels *which have never been detached from each other* and for which he has no immediate use, the Collector shall, on application, repay to him the value of such stamps or labels in money, deducting one anna in the rupee, upon such person *delivering up the same to be cancelled* and proving to the Collector's satisfaction that they were purchased by him with a *bona fide* intention to use them, that he has paid the full price thereof, and that they were so purchased or, in the case of impressed Court-fee stamps, so purchased, spoiled or rendered useless, within the period of six months preceding the date on which they are so delivered. Provided that Local Governments [*the Board of Revenue—Madras Notification*] may, in special cases, allow refunds when application is made within one year from the date of purchase of the stamps or labels, or, also in the case of impressed Court-fee stamps, within one year from the date on which the stamps were spoiled or rendered useless. The Local Governments may, at their discretion, delegate this power to any subordinate authority [*The last sentence omitted in Madras Notification.*]
2. When a licensed vendor surrenders his licence or dies, the Collector may, at his direction, if he considers that the circumstances justify the application, repay to him or his representatives, as the case may be, the values of stamps and labels, not spoiled or rendered unfit for use, returned into the Collector's store, deducting one anna in the rupee; or he may issue stamps and labels of other values in exchange, provided that, in the case of adhesive Court-fees labels, their value may not be refunded, nor stamps and labels of other values issued in exchange, unless, in cases where the value of each label is not less than Rs. 5, there are at least two such labels which have ever been detached from each other; and in cases where the value of each label is less than Rs. 5 unless there are at least four such labels which have never been detached from each other.

3. When adhesive labels are attached to impressed sheets of Court-fee stamps in accordance with the directions contained in Notification by the Government of India in this department No. 361, dated the 18th April 1883, [*Notification of the Local Government in the Revenue Department No. 1 dated 25th February, 1924—Madras Notification*] such labels [*stamps—Madras Notification*] should be regarded as impressed stamps for the purposes of refund under these rules.

#### B—RULES FRAMED BY THE MADRAS GOVERNMENT.

The above Government of India Notification has been re issued with the modification indicated in italics therein by the Madras Government by Notification dated 27th March 1929 [B. P. R. 99, 8th April 1929.]

The following are the Standing Orders of the Board of Revenue on the subject.—*Vide* Madras Stamp Manual, 4th ed., pp. 333—337.

96. No refund or renewal is admissible in the case of damaged or spoiled court fee adhesive stamps the value of which is less than one rupee. In cases where the value is not less than one rupee the Collector may, *on delivery of the stamps*, grant refund of their value after deducting one anna in the rupee or fraction of a rupee, whether the stamps were purchased in his district or elsewhere. Court-fee adhesive stamps attached to impressed sheets will, for purposes of refund, be treated as impressed stamps under paragraph 97 (a) *infra*. Court-fee stamps will be held to be spoiled or unfit for use within the meaning of this rule :— (1) when by accident happening to the same before they have been submitted to any Court or public officer they are rendered unfit for use ; (2) or when because of some error in the drawing up or copying of any writing, to which the said stamps are affixed, the said writing is rendered of no avail ; (3) or when any stamp has been filed in any Court or before any public officer, and cancelled accordingly, and it is afterwards discovered that such stamp has been required by mistake, and that a stamp of less value ought to have been required and certificate to that effect is issued by the said Court or public officer ; (4) or when plaints written thereon have not been presented in any Court. Board's Proceedings No. 2986, 8th August 1884. Board's Proceedings No. 245, 10th May 1890. Board's Proceedings No. 610-R., Mis., 7th April 1915. Board's Proceedings No. 15/41-R., Mis., 7th January 1915.

In the case of stamps spoiled under clause (3), the Collector may grant a refund or renewal as the case may be, provided that application is made for such refund or renewal within six months after the date of the delivery to the holder of the certificate mentioned in the clause. The applicant should be required to produce the certificate with his application and it should be cancelled when the refund or renewal is allowed. Board's Proceedings No. 71, 4th February 1890. Board's Proceedings No. 15/41-R., Mis., 7th January 1915.

2. Stamps affixed to documents in excess of legal requirements should be punched and treated as spoiled stamps for purposes of refund when their value is not less than one rupee. The stamps themselves should not be returned but the party concerned will be given a certificate (Form No. L first portion) to the effect that he is entitled to receive back their value less discount within ninety days at a specified treasury. An advice (Form No. L second portion) should, at the same time, be sent to the officer in charge of the treasury. The certificate will become null and void after the expiry of the ninety days and refund will not be admissible thereafter. The renewal of the certificate or the issue of a fresh or duplicate one on any ground whatever is prohibited. (Boards' Proceedings No. 158/567-R., Mis., 27th April 1916. Board's Proceedings No. 20/408-R., Mis., 25th March 1919.)

97. (a) When any person is possessed of impressed Court-fee stamps for which he has no immediate use, or which have been spoiled or rendered unfit or useless for the purpose intended, or

(b) When any person is possessed of two or more (or, in the case of denominations below Rs. 5, four or more) Court-fee adhesive labels *which have never been detached from each other* and for which he has no immediate use;

the Collector shall, on application, repay to him the value of such stamps or labels in money, deducting one anna in the rupee, upon such person delivering up the same to be cancelled and proving to the Collector's satisfaction that they were purchased by him with a *bona fide* intention to use them, that he has paid the full price thereof, and that they were so purchased or, in the case of impressed Court-fee stamps, so purchased, spoiled or rendered useless within the period of six months preceding the date on which they are so delivered. Provided that the Board of Revenue may, in special cases, allow refunds when application is made within one year from the date of purchase of the stamps or labels, or also in the case of impressed Court-fee stamps, within one year from the date on which the stamps were spoiled or rendered useless. Applications in such cases should be submitted for the orders of the Board of Revenue if refund is recommended. In cases of special hardship, however, the Board of Revenue may sanction the refund of the value, or replacement, of detached as well as spoilt Court-fee adhesive labels provided the application is put in within the period prescribed above. (Board's Proceedings No. 434, 9th September 1895. Board's Proceedings No. 206, 3rd March 1888.)

1. In the case of impressed Court-fee stamps, the power vested in the Board has been delegated to Collectors of districts. Board's Proceedings No. 2 /461-R., Salt, 6th February 1908.)

2. The word "Collector" occurring in this Standing Order, includes all Divisional Officers, Tahsildars and Deputy Tahsildars in independent charge. Board's Proceedings No. 132/770-R., Mis., 9th June 1909.)

**98.** The rules in paragraph 87 for the refund of the value of Non-judicial stamps returned by licensed vendors apply equally to Court-fee stamps and labels, provided that in the case of adhesive Court-fee labels, their value may not be refunded, unless, in cases where the value of each label is not less than Rs. 5, there are at least two such labels which have never been detached from each other; and, in cases where the value of each label is less than Rs. 5, unless there are at least four such labels which have never been detached from each other. (Board's Proceedings No. 111, 14th March 1893.)

This Standing Order allows no discretion to Collectors in the matter of refunding the value of detached Court-fee labels left by a deceased stamp vendor. (Board's Proceedings No. 750 R., Mis., 22nd May 1915.)

**99.** (i) Certificates for the refund of Court-fees will be issued by the various courts under sections 13, 14 and 15 of Act VII of 1870, an advice being sent to the Treasury Deputy Collectors to be filed in their offices as received.

(ii) Certificates for the refund of stamp-duty under the Code of Civil Procedure are to be sent by parties to the Treasury Deputy Collectors. They may be presented in person or sent by post. The holder of the certificates must state on the back of each certificate whether payment is to be made to himself or to any other person and at what treasury. No separate application or vakalatnama is necessary.

The Board held that a time limit need not be fixed for presentation of certificates granted by civil courts under section 13 of the Court-Fees Act for payment at the treasury, in view of the fact that the Act does not contemplate the forfeiture of the amounts covered by such certificates on account of the delay in presenting them and that article 3 (b) of the Madras Financial and Account Code would operate to prevent payments being made on certificates more than six months after the date of their issue, without a prior investigation of the claims by the Accountant-General. (Board's Proceedings No. 62 D., Mis., 11th January 1918.)

(iii) The officer receiving the certificate will at once enforce on it the date of presentation or receipt and affix his signature to the enfacement. The certificates, as they are received, will be sent to the Accountant in charge of the work, who will be immediately enter them in a register (Form No. XXIII) to be kept by him.

(iv) It will be the duty of the Accountant to compare the certificates with the daily advices received from the Courts. It will also be his duty carefully to examine the certificates, to detect any interpolations, erasures or other alterations to satisfy himself of the genuineness of the signatures attached to it, and to see that the amount to be refunded has been correctly entered.

(v) If the Accountant discovers any irregularity, etc., in the certificate, or entertains any doubt regarding it, he will state his objections in a written memorandum and send

it with the certificate to Treasury Deputy Collector, who will dispose of the case according to its merits, or, if necessary, take the orders of the Collector. The Deputy Collector will invariably enter, on the memorandum of objections, his decision or opinion on the point and sign it with his usual signature.

- (vi) If satisfied of the correctness of the certificate, the Accountant will write the necessary order for payment on the back of the certificate itself and, after obtaining the signature of the Deputy Collector, will send the certificate to the parties who are entitled to receive such payment by post "Bearing," if they are not present to receive it in person. The Accountant will note the date of delivery or despatch of the certificate in the register kept by him, referred to in paragraph (iii).
- (vii) If any certificates be rejected in consequence of containing errors, they will be returned to the parties who hold or person them with an endorsement under the signature of the Deputy Collector specifying the cause of rejection, unless any circumstance renders it necessary to retain them.
- (viii) When proper parties are not present to receive the rejected certificates, they will at once be sent to them by post bearing and will not be allowed to accumulate among the public records till the parties come for them.
- (ix) On payment being made at the Huzur Treasury, the receipts of the persons to whom the refunds are made will be taken on the back of the certificates, which will then be cancelled and forwarded by the Treasurer daily with his other accounts to the Head Accountant. The same course will be followed in the Taluk Treasuries, and the certificates will be sent to the Huzur with the Tahsildar's monthly accounts in support of the payments entered in them.
- (x) The Head Accountant will, on receipt of the certificates, have their amounts compared with those entered in the several monthly accounts current, and forward the certificates to the Accountant-General along with the monthly Treasury Accounts.

1. When a plaint disclosing a reasonable case on the merits is presented to any civil or Revenue Court in such a form that the presiding Judge or officer, without summoning the defendant, rejects it not for any substantial defect but on account of entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the Court is situated, together with a certificate from the Judge or officer who rejected the plaint that it

was rejected under the circumstances above described and that the value of the stamp should, in his opinion, be refunded. [Government of Madras Notification No. 358, 10th September 1921, item (3)]

2. The refunds sanctioned by the Small Cause Court, Madras, are paid by the stamp vendor of the Court and recovered by him from the Deputy Collector, Madras, on the production of the certificates granted by the Court. (Government Notification No. 404, 28th February 1872.)

3. Refunds of the value of impressed Court-fee stamps may be granted in cases in which the plaint for filing a suit has been written on the stamp but has not been presented to the Court. (Board's Proceedings No. 198, 31st July 1900)

2. Process-service fees collected in excess can be refunded to the parties, vouchers in support of the charge being forwarded to the Accountant-General with the Court's contingent bill.

**100.** The following procedure should be adopted when applications for the refund or renewal of stamps are received whether in regard to Judicial or Non judicial stamps :—

(1) The Treasury Deputy Collector will prepare a list in Form No. XXXVI of all stamps or stamped papers remaining in store or with the vendors which have become spoiled or rendered unfit for use and unused stamps admitted for refund and submit it to the Collector who, after comparing the papers with the list, will then and there record his reasons for such proceeding, and will punch and mark as cancelled, the stamps, in such manner, as to prevent their being again sold or presented.

(2) Applications for the renewal or refund of value of any stamped paper shall be in Form No. XXXVI. The Collector, after satisfying himself of the propriety of the application, will destroy the stamps as above, and if he sees fit, either authorize the issue of fresh stamps of similar or equal value as applied for, or will repay the value in money according to the above rules. In refunding the value of stamps, the deduction of one anna need not be calculated on the value of each stamp, but on the total value of the stamps produced under each of the three following heads, *viz.*, Court-fee stamps, Non-judicial stamps and Court Copy stamps. The Collector will certify the fact of the stamps being punched and marked as cancelled, and of the authorized issue in substitution, or the refund of the value at the foot of the application. A separate entry will be made in the accounts, of papers supplied in substitution of damaged papers presented by private parties and in the plus and minus memorandum sent to the Accountant-General.

(3) All the above stamps to be destroyed shall be entered in registers in Form No. XVIII (R. F. XXX-72) and Form No. XIX (R. F. XXX-73) and shall be kept in safe custody till they are actually destroyed in the local depots. The entries in the registers shall be verified with the stock of stamps taken out for destruction by the officer in charge of the local depot and the stamps shall be burnt monthly in the immediate presence of the Collector or in the immediate presence of the officer in charge of the local depot if so ordered by the Collector. A certificate shall be recorded in the register by the officer concerned, to the effect

that the stamps detailed therein and of the value of Rs.                      were destroyed and burnt in his presence. A copy of the certificate of destruction shall be sent to the Accountant-General, Madras, on or before the 6th of every month along with the plus and minus memorandum of stamps.

(3) The necessary entries on account of the above shall be shown in the monthly plus and minus memorandum of stamps sent to the Accountant-General, Madras, and in the stock registers and monthly accounts of the local depot. The discrepancies found between the plus and minus memorandum of stamps and the Treasury accounts shall be reconciled by the Accountant General, Madras, in direct communication with the officers concerned.

1. These applications are exempt from stamp-duty.

2. When applications for the refund of the value of spoiled stamps are rejected in accordance with the rules laid down in the Stamp Manual, the words "refund refused" should be written across each stamp. In the case of stamps for which there is no immediate use (section 54 of the Stamp Act) the endorsement should be so made as not to cancel the value of the stamps and preclude their being used subsequently if the owner so desires.

These instructions apply to Court-fee stamps as well as to Non-judicial stamps. [B. Ps. 52, 24th February 1899; 165/1105-R., Mis., 7th September 1912; 325-R., Mis., 6th March 1915.]

## APPENDIX VII.

### RULES FOR THE RECOVERY OF COURT-FEES IN PAUPER SUITS.

The following are the standing orders of the Board of Revenue on the subject—*Vide* Madras Stamp Manual, 4th edn. pp. 338-340.

**106.** The course to be pursued for the recovery of stamp-duty in pauper suits is as follows:—

On the receipt of a copy of the decree from the Court, which will be communicated to the Collectors of the districts concerned within a month after the passing of judgments, it will be sent to the Tahsildar with instructions to ascertain, in the first instance, whether the party liable is able to pay. If he is able to pay, the Government vakil will apply by petition to the Court, under the Civil Procedure Code, to recover the amount by the attachment and sale of the party's property. The application will contain the particulars required by the Civil Procedure Code as far as they are applicable to the case of execution of a decree as to costs only, and a request for the payment of the costs of the application including vakil's fee. The application may be presented at any time after the passing of the decree, whether the decree-holder has applied for execution or not. (Board's Proceedings No. 127, 31st May 1899.)

**107.** When on enquiry it is found that the prospects of recovering the stamp-duty awarded in pauper suits are slender, or when

owing to lapse of time the claim has been extinguished, application should be made to the Board for sanction to write off the demand as irrecoverable. A separate application is not needed in each case. All can be included in one statement, Form No. XLVIII, and be submitted quarterly. The Board of Revenue is authorised to remit irrecoverable arrears of stamp duty in pauper suits under the Court Fees Act [G. O. No. 3979 Law (General) dated 27th October 1931. B. P. No. 267 R. Mis., 5th November 1931].

**108.** Collectors are at liberty not to apply to Civil Courts for the execution of the decree to recover the stamp-duty in pauper suits in cases in which the collection of the amount cannot be effected without depriving the parties liable of the actual means of subsistence. Such amount may be dealt with under paragraph 107. (B. P. No. 457, 26th March 1873; High Court's Proceedings, 23rd April 1873; No. 931, 29th March 1882; No. 1126, 24th April 1882. Board's Proceedings No. 368-R., Mis., 15th March 1915.)

**109.** On receiving notice under rule 6, Order XXXIII of the Code of Civil Procedure (Act V of 1908) regarding an application to sue *in forma pauperis*, Collectors should institute the necessary inquiries as to the real status of the applicant, and should they feel satisfied that he is a real pauper, they will not dispute such application.

1. The following instructions have been issued to secure a better conduct of the enquires referred to in the above Standing Order.

(i) Immediately on receipt of notice under rule 6, Order XXXIII of the Civil Procedure Code, the Collector should issue an order directing an enquiry and report without delay by the village officer. This order should be communicated to the village officer promptly by the Tahsildar.

(ii) The village officer will report through the Tahsildar within a week of the receipt of the Collector's order regarding the solvency of the petitioner. The village officer's inquiry and report should be made at once without waiting to learn whether the counter-petitioner proposes to oppose the application.

(iii) The counter-petitioner should at the same time be informed by the Collector that the Tahsildar and the village officer concerned have orders to assist him in opposing the application if he intends to do so, and that he may communicate direct with the Tahsildar or the village officer on the subject; and an order to this effect should be communicated to the Tahsildar and through him to the village officer simultaneously with the call for a report on the petitioners' solvency referred to in (i) above. [B. P. 345-R., Mis., 21st October 1924.]

2. The Government Solicitor, Madras, is authorized to send pauper applications, relating to Madras direct to the Tahsildar of Madras and receive replies direct from him. Copies of such correspondence should however be forwarded to the Collector of Madras as it will enable the latter to watch the Tahsildar's reports with care. [B. P. 296-R., Mis., 13th October 1929.]

**110.** But if, on such enquiry, there appear to be circumstances in the applicant's case which *prima facie* disentitle him to sue as a pauper, the Collector should place himself in communication with the defendant or respondent in the case, and if such defendant or respondent is disposed to dispute the application the Collector by co-operating with him and employing the same vakil may effectually oppose the application.



**111.** When a defendant or respondent is not inclined to oppose the application, and when the Collector is of opinion that the application should be opposed, he will employ a vakil and cite witnesses. Such cases will naturally be rare, and the regulation fee for the vakil and other costs incurred may be sanctioned by the Collectors. In cases where the fees and the costs do not exceed the costs awarded by the Court and such costs have been advanced by the vakil himself, the Collector is authorised to permit him to deduct from the costs recovered his fees and the costs incurred by him. The transaction must be shown in the accounts, on receipt of advice from the vakil, in accordance with Articles 19 and 20, the Madras Financial and Account Code. (Board's Proceedings No. 482, 1st September 1892.)

**112.** When a person is permitted to sue as a pauper, it is not necessary that a vakil should be employed to watch the further proceedings in the case; but should circumstances subsequently come to light, which show that the indulgence granted to the plaintiff or appellant was one to which he was not entitled, the Collector will act in co-operation with the defendant or respondent in the manner directed in paragraph 110 or independently as laid down in paragraph 111. (G. O. No. 2526, J. D., 30th September 1879; Board's Proceedings No. 813, 3rd December 1887.)

**113.** Quarterly returns in Form XLVIII showing the progress made in the collection of the balance of stamp duty awarded to Government in pauper suits should be submitted by all Collectors to the Board. The returns should be despatched on or before the last day of the month following the quarter. (Board's Proceedings No. 345, 17th November 1898. Board's Proceedings No. 2374, Mis., 29th May 1900. Board's Proceedings No. 2747, Mis., 19th June 1900. Board's Proceedings No. 79, 6th April 1900.)

Collectors should add at the foot of the returns a certificate to the effect that the collections given in the returns agree with the treasury accounts, and should explain differences, if any. (Board's Proceedings No. 144/1711-R. Mis., 14th November 1917.)

## APPENDIX VIII.

### COURT-FEES UNDER CERTAIN ENACTMENTS.

#### A—PRESIDENCY SMALL CAUSE COURTS ACT (ACT XV OF 1882.)

##### CHAPTER X.

##### FEES AND COSTS.

Institution fee.

**71.** A fee<sup>1</sup> not exceeding—

(a) when the amount or value of the subject-matter does not exceed five hundred rupees—the sum of two annas in the rupee on such amount or value,

<sup>1</sup> The fee has been raised in Bengal.—See Bengal Act IV of 1922 at p. 636 *supra*.

- (b) when the amount or value of the subject-matter exceeds five hundred rupees,—the sum of sixty-two rupees eight annas, and one anna in the rupee on the excess of such amount or value over five hundred rupees,

shall be paid on the plaint in every suit, and every application under \* \* \* section 41; and no such plaint or application shall be received until such fee has been paid.

An additional fee of ten rupees shall be paid on the filing of every agreement under section 20.

**72.** The fees specified in the third and fourth columns of the fourth schedule hereto annexed shall be paid Fees for processes. previous to the issue in any suit or in any proceeding under Chapter VII of this Act of the processes to which the said columns respectively relate, by the persons on whose behalf such processes are issued, when the amount or value of the subject-matter exceeds the sum specified in the first column, but does not exceed the sum specified in the second column of the said schedule.

**73.** Whenever any such suit or proceeding is settled by agreement of the parties before the hearing, half the Repayment of half fees on settlement before hearing. amount of all fees paid up to that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid.

**74.** The Small Cause Court may, whenever it thinks fit, receive Fees and costs of poor persons. and register suits instituted, and applications under section 41 made by poor persons, and may issue process on behalf of such persons, without payment or on a part-payment of the fees mentioned in sections 71 and 72.

**75.** The Local Government may, from time to time, by notification in the official Gazette, vary the Power to vary fees. amount of the fees payable under sections 71 and 72.

Provided that the amount of such fees shall in no case exceed the amount prescribed by the said sections.

**76.** The expense of employing an advocate, vakil, attorney or other legal practitioner incurred by any party shall not be allowed as costs in any suit or in any proceeding under Chapter VII of this Act, Expense of employing legal practitioners.

1 The words and figures "section 38 or" were repealed by the Presidency Small Cause Courts Act (1882) Amendment Act, 1896 (7 of 1896).

in the Small Cause Court, in which suit or proceeding the amount or value of the subject-matter does not exceed twenty-rupees, unless the Court is of opinion that the employment of such practitioner was under the circumstances reasonable.

Sections 3, 5 and 25  
of Court-Fees Act,  
1870, saved.

77. Nothing contained in this Chapter shall affect the provisions of sections 3, 5 and 25 of the Court-Fees Act, 1870.

\* \* \* \* \*

### THE FOURTH SCHEDULE.

[See section 72.]

#### FEES FOR SUMMONSES AND OTHER PROCESSES.

When the amount or value of the subject-matter exceeds	But does not exceed	Fee for summonses.	Fee for other processes.
Rs.	Rs.	Rs. A. P.	Rs. A. P.
0	10	0 2 0	0 2 0
10	20	0 4 0	0 4 0
20	50	0 8 0	0 8 0
50	100	1 0 0	1 0 0
100	200	1 4 0	2 0 0
200	300	1 8 0	3 0 0
300	400	1 12 0	4 0 0
400	500	2 0 0	5 0 0
500	600	2 4 0	6 0 0
600	700	2 8 0	7 0 0
700	800	3 12 0	8 0 0
800	900	3 0 0	9 0 0
900	1,000	3 4 0	10 0 0
1,000	1,100	3 6 0	10 8 0
1,100	1,200	3 8 0	11 0 0
1,200	1,300	3 10 0	11 8 0
1,300	1,400	3 12 0	12 0 0
1,400	1,500	3 14 0	12 8 0
1,500	1,600	4 0 0	13 0 0
1,600	1,700	4 2 0	13 8 0
1,700	1,800	4 4 0	14 0 0
1,800	1,900	4 6 0	14 8 0
1,900	2,000	4 8 0	15 0 0

**B—THE MADRAS HINDU RELIGIOUS ENDOWMENTS ACT**  
(II OF 1927).

**Section 81.** (1) Notwithstanding anything contained in the first or second Schedule to the Madras Court-Fees Amendment Act, 1922, the proper fees for the documents described in columns 1 and 2 of Schedule II shall be the fees indicated in column 3 thereof.

(2) The provisions of the Madras Court-Fees Amendment Act, 1922, shall otherwise, so far as may be, apply to the documents mentioned in Schedule II.

**SCHEDULE II.**

Section. (1)	Description of the document. (2)	Proper fee. (3)
43 (2)	Appeal to the committee by any office holder or servant against an order of punishment by a trustee under sub-section (1)	Two rupees.
43 (3)	Further appeal to the Board by a hereditary office-holder or servant against an order of the committee on appeal under sub-section (2)	Two rupees.
43 (4)	Appeal to the Board by an office-holder or servant of an excepted temple	Two rupees.
44	Application to court by the trustee to recover the amount from the person in possession or by the person in possession from the person responsible in law.	The fee leviable on a plaint for the amount claimed under the Madras Court-Fees Act, 1922.
53 (3)	Appeal to the Board or application to court against an order of suspension, dismissal or removal by the committee of a trustee.	Twenty-five rupees.
55 (4)	Appeal to the Board by a trustee or person having interest against the order of a committee under sub-section (4) fixing standard scales of expenditure.	Twenty rupees.
55 (4)	Suit under the sub-section	... Fifty rupees.
57 (3)	Suit under the sub-section	... Fifty rupees.
57 (4)	Suit under the sub-section	... Fifty rupees.
62	Application to the Board by not less than twenty persons having interest for framing a scheme of administration for a math or excepted temple.	Fifty rupees.

Section. (1)	Description of the document. (2)	Proper fee. (3)
63 (4)	Suit under the sub-section	... Fifty rupees.
65	Suit under the section	... Fifty rupees.
67 (4)	Suit under the sub-section	... Fifty rupees.
67 (5)	Suit under the sub-section	... Fifty rupees.
70 (2)	Application to court to recover from the funds of the endowment the contribution leviable by the Board or committee.	Two rupees.
73	Suits under the section	... Fifty rupees.
76 (2)	Application to the court by a trustee of a math or temple or any person having interest for modifying or cancelling any order of the Board sanctioning alienation of immoveable property under sub-section (1).	The fee leviable on a plaint under article 17, Schedule II of the Madras Court-Fees Amendment Act, 1922. <sup>1</sup>
77 (2)	Application to a court to modify or set aside an order of the Board under sub-section (1) allocating any endowment, property or the income therefrom to religious and secular purposes.	Twenty rupees.
78	Application to the court for delivery of possession of endowments to a trustee appointed by the committee.	Two rupees.
84 (2)	Application to modify or set aside the decision of the Board under sub-section (1).	The fee leviable on a plaint under article 17, Schedule II of the Madras Court-Fees Amendment Act, 1922. <sup>1</sup>

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### *Grant of Copies.*

**Section 82.** The President of a Board or Committee may grant copies of proceedings or other records of his office on payment of such fees and subject to such conditions as may be determined by the Board.

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1. The Article referred to is Art. 17 and not the new Art. 17-A. See 58 M. L. J. 494 cited at p. 566 *supra*.

**C—COURT-FEE PAYABLE UNDER THE BENGAL  
TENANCY ACT VIII OF 1885.**

Nature of the document.	The stage at or the officer before whom filed or used.	Authority.
1. Application or petition.	{ Revenue officer ... Director of Land Records.	Sch. II. Art. 1 (b). Sch II. Art. 1 (c).
2. Applications and petitions of any objection to any entry proposed to be made in any draft record.	Any officer before draft publication under sec. 103-A, Bengal Tenancy Act.	Exemption by Rule 34 of No. 1872 J., dated 23-5-1921 Government of Bengal.
Applications and petitions of any objection to any entry proposed to be made in any draft record.	Under sec. 104-E Bengal Tenancy Act, before any officer.	Exemption under section 19 (IX) of the Court-Fees Act.
3. Application for settlement of rent under section 105, B. T. Act.	Any Settlement officer or Assistant S. O.	12 as. for each tenant making or joining or joined in the application. No. 6954 L. R., dated 21-7-1922. Bengal Govt. Calcutta Gazette 26-7-1922, Pt. I, p. 1451.
4. Application raising issue under s. 105-A during hearing.	Any Settlement Officer or Assistant S. O. under sec. 105-A.	In addition to the above fee, a stamp to the amount of an <i>ad valorem</i> fee chargeable under Art. 1, Sch. I subject to a maximum of twenty (Rs. 20) rupees No 6554 L. R., dated 21-7-1922.
5. Plaint in suits under sec. 106, B. T. Act.	Before Settlement Officer or Assistant S. O.	The fee is reduced to the amount of <i>ad valorem</i> fee chargeable under Article 1, Sch. I of the Court-Fees Act, in cases where the amount of such fee would be less than Rs. 20, clause 38 of No. 1872 J. dated 23 5-21 as amended by No. 3789 L. R., dated 3rd April 1922, Calcutta Gazette, Pt. I p 689,

Nature of the document.	The stage at or the officer before whom filed or used.	Authority.
6. A petition or application in a proceeding under secs. 105, 105 A, 108 and 108-A of B. T. Act.	Settlement Officer or Assistant S. O.	Sch. II, Art. 1 (b). See 32 C. W. N. 1136 (1928) <i>Gopal v. Gurucharam.</i>
7. A petition or application in a suit under section 106, B. T. Act.	Settlement Officer or Assistant Settlement officer or Civil Court.	Sch. II, Art. 1 (a). If the value is Rs. 50 or upwards Sch. II Art. 1 (b).
8. Application for commutation under sec. 40, B. T. Act.	Settlement Officer or Assistant Settlement Officer.	Sch. II, Art. 1 (b).
9. A suit under sec. 11-A B. T. Act.	Civil Court	... If simply declaratory Sch. II, Art. (iii), but if, with consequential relief Sec. 7 (IV) c, Court-Fees Act.
10. Appeals under Sec. 101-G.	{ Revenue Court Commissioner or Director of Land Records, Bengal.	... Sch. II, Art. 1 (b). Sch. II, Art. 1 (c).
11. Appeals under Section 109-A, against decisions of a Revenue Officer under sections 105 to 108-A both inclusive.	Special Judge	... <i>Ad valorem</i> or Rs. 20 as the case may be.
12. Application for copies.	Revenue Officer. S. O. and Asst S. O.	Sch. II. Art. 1 (a).
13. Certification of copies of final records otherwise than Govt. Rule 62.	Revenue Officer	... Clause (39) of No. 1872 J. dated 23-5-121 Bengal Govt. Calcutta Gazette, Pt. I, pp. 865, 877.

## APPENDIX IX

### THE SUITS VALUATION ACT.

LEGISLATIVE PROCEEDINGS AND SELECT COMMITTEE'S  
REPORT.

#### I

#### *Introductory Speech.*

The Hon'ble Mr. Ilbert also moved for leave to introduce a Bill to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto. He said :—

"This is a little Bill of no great importance, and its main object is to provide means for determining the value of land where it is necessary to ascertain that value for the purposes of jurisdiction.

"The institution-fee payable under the Court-Fees Act in suits for the possession of land is computed according to the value of the land, and in order to facilitate this computation the Act lays down certain rules of a somewhat arbitrary character, under which the value of the land is declared to be a particular multiple of the revenue charged or chargeable upon it. Under the various Civil Courts Acts the jurisdiction of the inferior Courts is usually limited by reference to the value of the subject-matter of the suit. One of these Acts—the Madras Civil Courts Act of 1873—directs that, where the subject-matter of a suit is land, its value shall, for the purposes of jurisdiction, be fixed in the manner provided by the Court-fees Act for the purpose of determining the institution fee. The other Civil Courts Acts do not contain any similar direction, but it appears to be a very common practice in all the provinces to treat the value of land for court-fee purposes as being also its value for jurisdictional purposes. The practice is not strictly warranted by law, and is opposed to some rulings of the Bombay High Court, but there is a great deal to be said in favour of it on the score of convenience.

"However, under the rules laid down in the Court-fees Act, land is, in many parts of the country, including the Madras Presidency, assessed at something very much below its net market-value. This does not much matter for the purposes of court-fees, because the Government has not the slightest intention or desire to increase the amount of those fees; on the contrary, it would reduce them if the financial situation permitted. But the Madras Government tells us that the effect of applying the court fees rules for the purpose of determining jurisdiction is to bring within the jurisdiction of some of the inferior Courts land-suits of a class which those Courts were not intended, and indeed are not qualified, to deal with; and accordingly that Government desires to substitute some other rules which would bring out a valuation more in accordance with the facts. But unfortunately we are not in a position to touch the Court-fees Act at present, and we do not desire to interfere with the practice which is observed in provinces other than Madras, unless and until it is shown to produce inconvenient results. Under these circumstances we propose to meet the wishes of the Madras Government as far as we can by authorising Local Governments, after consulting their High Courts, and with the previous sanction of the Government of India, to frame rules for determining the value of land for jurisdictional purposes. If the Madras Government thinks fit to frame such rules, the rules will, when they come into force, supersede the provisions of the Madras Civil Courts Act to which I have referred. Whether other Local Governments will consider it worth while to frame such rules on the subject I do not know, but, if they do, the rules framed by them may, whenever the time comes for amending the Court-fees Act, be of material assistance in helping the Government of India



to lay down principles of computation which will bring out results more in accordance with the facts than those embodied in the old Act. I repeat, however that there is no intention to do anything which will directly or indirectly raise the amount of institution-fees payable in suits relating to land.

"This is the main object of the Bill. The Bill contains one or two other minor provisions to which it is not necessary for me to refer at the present stage."

The motion was put and agreed to.

The Hon'ble Mr. Ilbert also introduced the Bill.

## II

### *The Select Committee's Report.*

1. We have divided the Bill into three Parts, of which Part I deals with suits relating to land and Part II with other suits, Part III containing supplemental provisions.

Part I is to be brought into force by notification of the Governor-General in Council, and it is proposed that Part II and the material portion of Part III come into force on the first day of July next.

2. We have excepted from the operation of section 8 (section 4 of the Bill as introduced) the suits to which paragraph ix of section 7 of the Court-fees Act relates. In a suit for foreclosure or sale the principal and interest due under the mortgage-deed represent the value of the suit for purposes of jurisdiction, while the value for the computation of court-fees is the principal only.

3. We have added to the Bill a section in the terms of section 32 of the Punjab Courts Act, 1884, and have proposed to repeal that section of that Act.

4. We have so amended section 11 (section 5 of the Bill as introduced) as to give the appellate Court a discretion as to proceeding with an appeal in a suit which was instituted in a Court without jurisdiction as regards the value, and we have made the provisions of the section applicable to an appellate Court apply also to a Court exercising revisional jurisdiction.

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5. We do not think that the measure has been so altered as to require re-publication, and we recommend that it be passed as now amended.

## III

### *Speech on presentation of select committee's report.*

The Hon'ble Mr. Scoble presented the Report of the Select Committee on the Bill to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto.

The Secretary, with the permission of His Excellency, the President, read the following remarks by the Hon'ble Rana Shankar

Baksh Singh, as the Hon'ble Member would not be able to attend the next meeting of the Council.

"My Lord—With your Lordship's permission I beg to offer a few remarks on the Bill now before your Excellency's Council.

"There is nothing in the present Bill which is open to objection or which calls for criticism.

"The main object of the Bill seems to be to obviate difficulties in estimating the value of the subject-matter of suits for the purpose of determining the jurisdiction of Courts with respect thereto. It not unfrequently happens that the lower Court, under-estimating the value of the subject-matter of a suit brought before it, considers that it falls within its jurisdiction, while on appeal the appellate Court holds that the lower Court had no jurisdiction and reverses its decision solely on this ground. The result is that all the proceedings gone through and the evidence produced by the parties concerned are rendered useless, and the case has to be re-tried by a Court of competent jurisdiction. It also happens that the plea of want of jurisdiction, although it was not put forth in the lower Court, is urged in the appellate Court, which—finding from the record of the case that in trying a suit the value of the subject-matter of which was too high, the lower court had really exceeded the limits of its jurisdiction—sets aside its decision, and the whole proceeding is quashed.

"Sometimes the case is remanded by the appellate Court to be re-tried with special reference to the value of the subject-matter and then, finding that the suit as regards the value of the property in disputed was beyond the jurisdiction of the lower Court, the appellate Court cancels the whole proceeding and directs the case to be re-tried by a court of competent jurisdiction,

"These, my Lord, are the most obvious instances in which the law, as it now stands, fails to accomplish its object, and to remedy such defects, legislation on the lines of the present Bill seems to be necessary.

"The Bill gives Local Governments the power to make rules regarding the mode of estimating the value of the subject-matter of suits. This is necessary, because different rates prevail, not only in different provinces, but in the different parts of the one and the same provinces, and because no definite provisions could be made in the Bill itself for estimating the value of the subject-matter of suits in different provinces or parganas for the purpose of determining the jurisdiction of Courts, more especially the value of land is always fluctuating, which makes it all the more necessary to invest Local Governments with the power to make rules after duly considering the different local conditions and the various and constantly varying rates prevailing in different localities, and from time to time to alter or modify the rules thus made, so as to make them applicable to land of different descriptions and capacities and to other property of which the value is always rising and falling.

"The present Bill, as amended by the Select Committee, fairly promises to fulfil the object with which it has been framed and brought before this Hon'ble Council".

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## APPENDIX X.

### RULES FOR THE VALUATION OF CERTAIN CLASSES OF SUITS.

#### A—MADRAS.

(1) *In a suit to recover lands in which there are wells, the valuation for the purposes of the suit should be based on the value of the lands only and the wells should not be separately valued (H. C. Pros. No. 1369 dated 29th August 1879)*

(2) *If an appeal is preferred by a plaintiff*, the stamp fee will ordinarily be calculated on the claim or portions of the claim disallowed by the lower Court. If an appeal is preferred by a defendant, the stamp fee will ordinarily be calculated on the amount adjudged by the lower Court, provided that the parties are at liberty to relinquish a portion of their claim on expressing their intention of so doing in the Memorandum of Appeal.

(3) The fee chargeable on appeals from orders under clause (c) of section 244 of the Code of Civil Procedure of 1882 (now Section 47 of the Code of 1908) shall be limited to the amount chargeable under Article 11 of the second schedule to the Court-Fees Act, 1870.

(4) *Valuation in certain classes of suits under the Malabar law.*—As the subject-matter of suits comprised in the classes of suits mentioned in clauses (b) and (c) of paragraph IV of Section 7 of the Court-Fees Act, 1870, *viz.*, suits for the removal of a karnavan or ejaman or for the enforcement of a right as karnavan, ejaman or member of a tarwad governed by the Marumakkattayam or Alyasantana system of law or of a Nambudari illom, does not admit of being satisfactorily valued, and whereas by an order in Council dated the 24th day of January 1903 and numbered 86, Judicial, His Excellency the Governor of Fort St. George in Council, has sanctioned the following rules for determining the value of the subject-matter of such suits, the High Court. under and by virtue of the authority conferred upon it by section 9 of the Suits Valuation Act, 1887, and all other powers thereunto enabling, hereby directs and orders that for purposes of the Court Fees Act, 1870 and the Suits Valuation Act, 1887 the value of the subject-matter of all such suits and appeals in such suits, instituted or presented on or after the 1st day of March 1903, shall be determined according to the following rules:—

(i) The subject-matter of a suit for the removal of a karnavan or ejaman or for the enforcement of a person's right as karnavan or ejaman of a tarwad governed by the Marumakkattayam or Alyasantana system of law or of a Nambudari illom, shall, for purposes of the Court-Fees Act, 1870, and the Suits Valuation Act, 1887, be valued at one-third of the amount at which the same would be valued under the provisions of the Court-Fees Act, 1870, if the suit were one brought by a stranger for the recovery of the whole property—moveable and immoveable—possessed by the tarwad or illom to which the suit relates.

(ii) The subject-matter of a suit for the enforcement of a person's right as member of a tarwad governed by the Marumakkattayam or Alyasantana system of law or of a Nambudari illom, shall, for purposes of the Court-Fees Act, 1870, and the Suits Valuation Act, 1887, be valued at the amount at which, if the whole of the

tarwad or illom property were by the consent of all equally divided among all the members (including the plaintiff) of the tarwad or illom, the plaintiff's share would be valued, with reference to the valuation of the suit under the Court-Fees Act, 1870 if the suit were one brought by a stranger for the recovery of the whole property—moveable and immoveable—possessed by the tarwad or illom.

- (iii) In all such suits, the plaintiff or appellant shall state in the plaint or memorandum of appeal, as the case may be, the amount at which he values the entire property of the tarwad or illom and such valuation, unless the Court has reason to believe the valuation is not made *bona fide*, shall be accepted by the Court.

Notification dated 20th February, 1903 published at p. 363 Part II of Fort St. George Gazette, dated 3-3-1903. H. C., Dis No. 202 of 1903.

#### THE GANJAM AND VIZAGAPATAM (ACT XXIV OF 1839) AGENCY RULES.

##### *Valuation of Suits.*

**Rule 2.** (1) The valuation of a suit or appeal will be made according to the provisions of the Court Fees Act, 1870, as amended by Madras Act of 1922 and of the Suits Valuation Act, 1887. The Court may admit, without payment of institution fee, any suit or appeal other than a suit or appeal brought to recover compensation for loss of caste, libel, slander, abusive language or assault, if satisfied that the plaintiff or appellant is not able to pay: provided that if the applicant was allowed to sue or appeal as a pauper in the Court from whose decree the appeal is preferred, no further inquiry in respect of his pauperism shall be necessary unless the appellate court sees cause to direct such enquiry.

(2) Where the pauper succeeds in the suit or appeal instituted by him, the Court may direct the recovery of the amount of court-fees or of such portion thereof as the court may deem fit.

##### *Jurisdiction of Courts.*

**Rule 3.**—The courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature, excepting suits of which their cognizance is either expressly or impliedly barred.

**Rule 4.**—Claims to succession to or of any interest in the states of any chief, or to any pension or grant of money or land revenue conferred or made by the British or any former Government shall not be entertained in any Court. Such claims shall be inquired into by the Agent to the Governor or Government Agent, as the case may be, and he shall submit the result of the inquiries for the orders of the Government who may pass such orders as they think fit.

(*Note.*—Claims to pensions and grants of money or land revenue are governed by the provisions of the Pensions Act XXIII of 1871).

**Rule 5.**—(1) Agency Munsifs shall have cognizance of suits for moveable or immoveable property not exceeding in value Rs. 500 but shall not have cognizance of any suit in which any Zamindar, Bissoyee or any Mansubdar, Muttadar or other feudal hill chief may be concerned :

Provided that the Agent to the Governor or the Government Agent, as the case may be, or Agency Divisional Officer having jurisdiction may transfer any suit in which a hill chief is concerned if both parties desire such transfer or consent thereto and if the value of the suit does not exceed Rs. 500 to the Agency Munsif within whose local jurisdiction the cause of action has arisen for disposal by him :

Provided also that the Agent to the Governor or the Government Agent, as the case may be, with the sanction of Government may authorise, any Agency Munsif by name to take cognizance of suits up to any amount not exceeding Rs. 3,000 in value.

(2) Suits cognizable by an Agency Munsif shall be instituted only in the Court of the Agency Munsif having jurisdiction.

**Rule 6.**—With the exception firstly of suits which are cognizable by Agency Munsifs and secondly of the suits described in rule 7, all suits shall be instituted in the Court of the Agency Divisional Officer having jurisdiction.

**Rule 7.**—Suits of a value exceeding Rs. 5,000 or for revenue paying land of which the value of the annual produce exceeds Rs. 500 shall be instituted in the Court of the Agent to the Governor, or the Government Agent as the case may be.

#### B—LAHORE.

#### MANNER OF DETERMINING THE VALUE OF SUITS FOR PURPOSES OF JURISDICTION.

(*Section 9, Suits Valuation Act, 1887.*)

Rules made by the High Court, with the previous sanction of the Local Government under the powers conferred by section 9 of the Suits Valuation Act, VII of 1887, and all other powers in that behalf, for determining the value of the subject-matter of certain classes of suits, for the purposes of jurisdiction, which do not admit of being satisfactorily valued, and for the treatment of such classes of suits, as if their subject-matter were of the value as hereinafter stated.

#### RULES.

1. (i) Suits in which the plaintiff in the plaint asks for a decree against the other party to the alleged marriage, either alone, or with other defendants, for restitution of conjugal rights ;

- (ii) Similar suits for a decree establishing, or annulling or dissolving a marriage ;
- (iii) Suits in which the plaintiff in the plaint asks for a decree establishing a right to the custody or guardianship of a minor, including guardianship for the purposes of marriage ;
- (iv) Suits in which the plaintiff in the plaint asks for a decree establishing or annulling an adoption, including under the expression "adoption" the customary appointment of an heir—
- (a) For the purposes of the Court-fees Act, 1870, suits of classes (i) with the exception noted below (ii), (iii) and (iv), Rs. 200.
- (b) For the purposes of the Suits Valuation Act, 1887, and the Punjab Courts Act, 1918, as amended, suits of classes (i) and (ii)—Rs 1,000 ; suits of classes (iii) and (iv)—such sum exceeding Rs. 500 and not exceeding Rs. 1,000 as the plaintiff shall state in the plaint.

*Explanation 1.*—Classes (i) and (ii) do not include petitions under any special Act relating to the dissolution of marriage.

*Explanation 2.*—Class (iii) does not include proceedings under Act IX of 1861<sup>1</sup> or Act XIII of 1874.

2. Suits by a plaintiff, during the lifetime of a person alleged to have a restricted power of alienation in respect of immoveable property, in which the plaintiff in the plaint seeks to have an alienation of immoveable property made by such person declared to be void except for the life of such person or for some other determinate period,—

*Value.*—(a) For the purposes of the Court-fees Act, 1870,—as determined by that Act.

(b) For the purposes of the Suits Valuation Act, 1887, and the Punjab Courts Act, 1918 (as amended),—

(i) When the alienation is by a written instrument which declares the value of the interest purporting to be created, or the amount of the consideration for which the alienation is made—such value or amount.

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<sup>1</sup> Since repealed by Act VIII of 1890.

- (ii) In other cases—the market value, at the date of institution of the suit, of the property alienated; subject in either case to the provisions of Part I of the Suits Valuation Act, 1887, and of the rules in force under the said part, so far as those provisions are applicable.

3. Suits in which the plaintiff in the plaint asks for accounts only; not being suits to recover the amount which may be found due to the plaintiff on taking unsettled accounts between him and the defendant, or suits of either of the kinds described in Order XX, Rule 13, of the Code of Civil Procedure,—

*Value*—(a) For the purposes of the Court-fees Act, 1870,—as determined by that Act.

- (b) For the purposes of the Suits Valuation Act, 1887, and the Punjab Courts Act, 1918 (as amended)—Such amount exceeding Rs. 100 and not exceeding Rs. 500, as the plaintiff may state in the plaint.

4. Suits in which the plaintiff in the plaint seeks to establish or to negative any right hereinafter mentioned, with or without an injunction, and with or without damages, namely;—a right of way; a right to open or maintain or close a door or a window, or a drain, or a water shoot (parnala); a right to or in a water course or to the use of water; a right to build, or raise or alter or demolish a wall; or to use an alleged party-wall or joint staircase—

*Value*—(a) For the purposes of the Court-fees Act, 1870,—as determined by that Act.

- (b) For the purposes of the Suits Valuation Act 1887, and the Punjab Courts Act, 1918 (as amended),—

(i) if damages are not claimed,—such amount exceeding Rs. 100, and not exceeding Rs. 500, as the plaintiff may state in the plaint;

(ii) if damages are claimed,—the amount of such damages increased by Rs. 100.

5. Suits in which the plaintiff in the plaint seeks to set aside an award, and applications registered as suits under the provisions of Schedule II, paragraphs 17 and 18, of the Code of Civil Procedure (to file an agreement to refer to arbitration), or of Schedule

II, paragraph 19, of the said Code (to file an award), when or so far as the award or the agreement relates to property ;—

*Value*—(a) for the purposes of the Court-fees Act, 1870,—as determined by the Act.

(b) For the purposes of the Suits Valuation Act, 1887, and the Punjab Courts Act, 1918 (as amended),—the market-value of the property in dispute, subject to the provisions of Part I of the Suits Valuation Act, 1887, and of the rules in force under the said Part, so far as those provisions are applicable.

. The foregoing rules are subject to the following explanations :—

(i) the term “plaint” includes an amended as well as original plaint;

(ii) a suit falling within any of the above descriptions is not excluded therefrom merely by reason of the plaintiff seeking other relief in addition to that described in any of the foregoing rules.

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#### MANNER OF DETERMINING THE VALUE OF LAND FOR PURPOSES OF JURISDICTION IN CERTAIN CLASSES OF SUITS.

The following rules made by the Local Government, under the power conferred by section 3 of the Suits Valuation Act, 1887, and published as Punjab Government Notification No. 255, dated the 4th March 1889, for determining the value of land for purposes of jurisdiction in the suits mentioned in the Court-fees Act, section 7, paragraphs v and vi, and paragraph x, clause (d), are republished for information and guidance ;—

In suits for the possession of land the value of the land, for purposes of jurisdiction, shall be held to be as follows :—

(a) Where the land forms an entire estate, or a definite share of an estate paying annual revenue to Government or forms part of such an estate, and the annual revenue payable for such part is recorded in the Collector's register and such revenue is permanently settled,—sixty times the revenue assessed on the land.

(b) Where the land forms an entire estate, or a definite share of an estate paying annual revenue to Government, or



forms part of such estate and is recorded as aforesaid, and such revenue is settled but not permanently,—thirty times the revenue so payable.

*Explanation to clause (b)*—Where the land is a fractional share or a portion of part of an estate, and the land revenue payable for such part is recorded in the Collector's register, and such revenue is not permanently settled, the value for purpose of jurisdiction, shall be held to be thirty times such portion of the revenue recorded in respect of that part as may be reatably payable in respect of the share or portion.

*Illustrations*—(1) In a suit for possession of a one-third share of the entire holding of 10 ghumaos forming part of an estate and recorded as paying Rs. 20 annual revenue, the value of the land for the purposes of jurisdiction is one-third of thirty times Rs. 20, or Rs. 600.

(2) In a suit for possession of 1 ghumao out of the same holding, the value of the land is one-tenth of thirty times Rs. 20, or Rs. 60.

(c) Where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue, and net profits have arisen from the land during the year next before the date of presenting the plaint,—fifteen times such net profits. But where no such net profits have arisen therefrom,—the market-value.

(d) Where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and does not come under clauses (a), (b) or (c) of this rule,—the market value of the land.

(e) Where the subject-matter is a garden,—the market value of the garden.

2. In suits to enforce right of pre-emption in land the value of the land, for the purposes of jurisdiction, shall be calculated by the preceding rules.

3. When the land or interest in suit falls partly under one and partly under another of the classes enumerated in rule 1, the value of the land in each class shall be separately calculated.

4. In the application of the above rules the word "land" includes all such right, *e.g.*, shares in village common and in wells as are accessory to the land in suit and the word 'revenue' as used in the preceding rules when applied to land irrigated from canals, shall be held to include owner's rate for the year next before the date of presentation of plaint, or half the occupier's rate for the same period in cases in which no owner's rate is chargeable.

5. In suits for specific performance of an award so far as the award relates to land, the market-value of the land.

6. Suits relating to a life-interest in land and suits relating to an occupancy right shall, for purposes of jurisdiction, be deemed to be of half the value provided for suits for possession under rule 1.

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INSTRUCTIONS ON THE SUBJECT OF THE SUITS VALUATION ACT,  
VII OF 1887, AND THE RULES MADE THEREUNDER, FOR  
DETERMINING THE VALUE OF CERTAIN CLASSES  
OF SUITS FOR PURPOSES OF COURT-FEES  
AND JURISDICTION-

The attention of all Civil Courts is drawn to the following instruction on the subject of the provisions of Suits Valuation Act, VII of 1887, and the rules and directions made thereunder, contained in Chapters X and XI of this Volume.

2. Part I of the Act was extended to this province by Government of India, Home Department, Notification No. 210, dated the 20th February 1889, and the Local Government has made rules under section 3 of the Act determining the value of land and of certain interests therein, for purposes of jurisdiction in the suits mentioned in the Court-fees Act, 1870, section 7, paragraphs v and vi and paragraph x, clause (d), which are republished as Chapter XI of this Volume.

3. No restrictions under section 3, sub-section (2), of the Act have been imposed as to the classes of land to which the rules apply, or as to the local extent of their operation, and they apply therefor to all land generally throughout the province, whether assessed with land revenue or not.

Section 4 of the Suits Valuation Act provides that, where a suit mentioned in the Court-fees Act, section 7, paragraph iv, or Schedule II, article 17, relates to land, or an interest in land, of which

the value has been determined by the rules made under section 3, the amount at which the relief sought in the suit is valued for purposes of jurisdiction shall not exceed the value of the land or interest as determined by those rules. The suits falling under section 7, paragraph iv, of the Court-fees Act, are certain suits in regard to which the plaintiff is required to state the amount at which he values the relief sought in the plaint. Where the value so stated exceeds the value of the land or interest therein as fixed by the rules, the latter and not the former must be regarded as the value for purposes of jurisdiction. The suits specified in Schedule II, article 17, of the Court-fees Act, are those for which it is difficult to fix a correct valuation, and a fixed court-fee of Rs. 10 is accordingly levied in these cases. Where any such case relates to land or any interest in land the value for purposes of jurisdiction, will be the value of the land or interest as fixed by the rules.

5. The suits falling under the Court-fees Act, section 7, paragraphs i, ii, iii, vii, viii, ix, x (a) (b), (c), and xi (a) to (f) inclusive, are, with one or two exceptions, either such as are subject to an *ad valorem* court-fee, in regard to which the value for the purposes of computing the court fee and the value for the purpose of determining jurisdiction are, under section 8 of the Suits Valuation Act, 1887, the same; or suits dealt with by directions made by the High Court under section 9 of the Act.

6. In order to guard against mistakes as to the value of suit for purposes of jurisdiction and of court-fees, respectively, every plaint ought upon its face to show the value for purposes of jurisdiction as well as the value for the purpose of computing court-fees. The former information is requisite in order that the Court may determine whether the plaint should be returned under Order VII, Rule 10, of the Code of Civil Procedure. When a plaint omits to disclose the value of the suit for the purposes of jurisdiction, the person presenting it should be questioned, and his answer recorded on the plaint, unless he consents to amend it then and there.

7. As special care is necessary with respect to cases falling under the provisions of section 7, paragraph iv, and schedule II, article 17, of the Court-fees Act, in valuing suits for the purposes of jurisdiction and of court-fees, a schedule showing the value in each class of these cases has been prepared to guide the Courts in fixing the value in particular cases, and the opportunity has been taken to pre-

pare an exhaustive schedule following the classifications of suits in the Court fees Act. It must be clearly understood, however, that this schedule in itself has no legal force and that it is merely intended for ready reference by the Courts in dealing with questions of value. An examination of the schedule will show that it is in only a few cases in which it is not possible to value the suit for purposes of jurisdiction, either by the actual value of the subject-matter or by reference to the provisions of sections 4 and 8 of the Suits Valuation Act, and the rules under section 3, and directions under section 9 of the Act.

8. There is no express provision in the Suits Valuation Act, 1887, in regard to the classes of suits mentioned below and they do not admit of being disposed of by rules under Part I, nor are they dealt with by directions under Part II of the Act. The valuation of such suits, therefore, must be left to judicial decision, as occasion arises. The suits are,—

suits for houses ;

suits for pre-emption in respect of houses ;

suits for removal of attachment of houses ;

suits by or against mortgagors or mortgagees as such ;

suits falling under schedule II, article 17, clause (iv), which are not provided for by the rules under section 3 or directions under section 9 or by section 4 of the Suits Valuation Act ;

Suits falling under section 7, sub-section x, clause (d), of the Court-Fees Act, and relating to property other than land.

9. In the cases of some other classes of suits, such as those falling under articles 14 and 20 of Schedule II of the Court-fees Act, or suits relating to marriage and minority, the law allows no choice of the Court in which proceedings must be taken. There is therefore, no necessity, to fix any valuation for the purposes of determining jurisdiction, while for purposes of court-fees they are sufficiently dealt with by the Court-fees Act, 1870.

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## THE COURT-FEES ACT

[APP. X

SCHEDULE SHOWING THE VALUE OF SUITS FOR PURPOSES OF COMPUTING  
COURT-FEES AND OF DETERMINING THE JURISDICTION  
OF THE COURTS, RESPECTIVELY.

1	2	3	4	5
Value of suits for the purpose of computing Court-fees under the Court-fees Act, 1870.				
Court-fees Act.	Nature of suit.	Value for court-fee purposes.	Suits Valuation Act and Rules.	Value for the purpose of determining the jurisdiction of the Court under the Suits Valuation Act, 1887, and the Rules and Directions made thereunder.
Section 7, paragraph i.	In suits for money.	<i>Ad valorem</i> , according to the amount claimed.	Section 8.	The same as in column 3.
Section 7, paragraph ii.	In suits for maintenance and annuities or other sums payable periodically.	<i>Ad valorem</i> , on ten times the amount claimed to be payable for one year.	"	"
Section 7, paragraph iii.	In suits for moveable property other than money where the subject-matter has a value.	According to such value at the date of presenting the plaint.	"	"
Section 7, paragraph iv.	In suits— (a) for moveable property where the subject-matter has no market value,	<i>Ad valorem</i> , according to the amount at which the relief sought is valued in the plaint or memorandum of appeal; such value must be stated.	" (a)	(a) The value of the relief sought as stated in the plaint.

Section 7, paragraph iv— <i>Contd.</i>	(b) to enforce the right to share in any property on the ground that it is joint family property;	" "	(b) As regards land—section 4 and rules under section 3.  In other cases—the same as in (a).	(b) The value of the relief sought as stated in the plaint, but not exceeding the value of the land under the rules. The same as in (a).
	(c) to obtain a declaratory decree or order where consequential relief is prayed;	<i>Ad valorem</i> , according to the amount at which the relief sought is valued in the plaint or memorandum of appeal; such value must be stated.	(c) The same as in (b) subject to rule 2, Chapter X of this volume and section 9 of the Suits Valuation Act.	(c) The same as in (b), subject to rule 2, Chapter X of this volume and section 9 of the Suits Valuation Act.
	(d) to obtain an injunction.	" "	(d) Ditto. subject to rule 4, Chapter X of this volume and section 6 of the Suits Valuation Act.	(d) The same as in (a) subject to rule 4, Chapter X of this volume and section 9.
	(e) for a right to some benefit (not herein otherwise provided for) to arise out of land; and	" "	(e) The same as in (c).	(e) The same as in (a).
	(f) for account.	" "	(f) The same as in (a) subject to rule 3, Chapter X of this volume and section 9.	(f) The same as in (a) subject to rule 3, Chapter X of this volume and section 9.
Section 7, paragraph v.	In suits for the possession of land, houses and gardens according to the value of the subject-matter; and such value shall be deemed to be— Where the subject-matter is land, and	<i>Ad valorem</i> , on ten times the revenue payable.	(a) Section 3, Suits Valuation Act and rule I clauses (a) and (b) and rules 3 and 6	(a) If the revenue is permanently settled sixty times the

SCHEDULE SHOWING THE VALUE OF SUITS FOR PURPOSES OF COMPUTING  
COURT-FEES AND OF DETERMINING THE JURISDICTION  
OF THE COURTS, RESPECTIVELY—*Contd.*

1	2	4	5
	Value of suits for the purpose of computing Court-fee under the Court-fee Act, 1870.		
Court-fees Act.	Nature of suit.	Value for court-fee purposes.	Value for the purpose of determining the jurisdiction of the Court under the Suits Valuation Act, 1887, and the Rules and Directions made thereunder.
		Suits Valuation Act and Rules.	Value for purposes of jurisdiction.
Section 7, paragraph v.— <i>Contd.</i>	or forms part of such an estate and is recorded in the Collector's register as separately assessed with such revenue; and such revenue is permanently settled.		revenue assessed on such land.
(b)	When the land forms an entire estate, or a definite share of an estate paying annual revenue to Government or forms part of such estate and is recorded as aforesaid, and such revenue is settled but not permanently :	<i>Ad valorem</i> , on ten times the revenue payable.	(b) If the revenue is not permanently settled—thirty times the revenue assessed on such land.
(c)	Where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed	<i>Ad valorem</i> , on fifteen times the net profits.	(c) Fifteen times the net profits.
		(c) Rule I (c) and rules 3 and 6 of Chapter XI of this volume.	

Section 7, paragraph v.— <i>Contd.</i>	payment in lieu of such revenue and net profits have arisen from the land during the year next before the date of presenting the plaint;	<i>Ad valorem</i> , on value fixed by Court with reference to value of similar land in the neighbourhood.	Rule I, clause (d) and rules 3 and 6 of Chapter XI of this volume.	Market value.
but where no such net profits have arisen therefrom.	Market-value of the land.	(d) Rule I, clause (d) and rules 3 and 6 of Chapter XI of this volume.	(d) „	
(d) Where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as above mentioned.	According to the market value of the house or garden.	(e) Section 3, rule I, clause (e) and rules 3 and 6 of Chapter XI of this volume.	(e) in the case of a garden, the market-value. In the case of a house, the market-value presumably, but this must be left to judicial decision.	
(e) When the subject-matter is a house or garden.	According to the value (computed in accordance with paragraph v of this section) of the land, house or garden in respect of which the right is claimed.	The same as for section 7, paragraph v; and rule 2 of section 3 and Chapter XI of this volume.	As for section 7, paragraph v, except as to a house, for which as above,	
Section 7, paragraph vi.	In suits to enforce a right of pre-emption.			



## THE COURT-FEES ACT

[APP.

SCHEDULE SHOWING THE VALUE OF SUITS FOR PURPOSES OF COMPUTING  
COURT-FEES AND OF DETERMINING THE JURISDICTION  
OF THE COURTS, RESPECTIVELY—*Contd.*

1	2	3	4	5
	Value of suits for the purpose of computing Court-fee under the Court-Fees Act, 1870.			
Court-fees Act.	Nature of suit.	Value for court-fee purposes.	Suits Valuation Act and Rules.	Value for purpose of jurisdiction.
Section 7, paragraph vii.	In suits for the interest of an assignee of land revenue.	Fifteen times the net profits as such for the year next before the date of presenting the plaint.	Section 8.	The same as in column 3.
Section 7, paragraph viii.	In suits to set aside an attachment of land or of an interest in land or revenue :	According to the amount for which the land or interest was attached.	Section 8.	The amount for which attached, not exceeding the value of the land and interest.
	Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest.	...	Section 3 and rules so far as they apply.	The case of attachment of a house is not provided for, and must be left to judicial decision.
Section 7, paragraph ix.	In suits against a mortgagee for the recovery of the property mortgaged; and in suits by the mortgagor, pressed to be secured by :	Accordingly to the principal money exacted.	Section 8 does not apply.	No provision is made, and the value must be left to judicial decision.

Section 7, paragraph ix.— <i>Contd.</i>	mortgagee to foreclose the mortgage or, where the mortgage is made by conditional sale, to have the sale declared absolute.	the instrument of mortgage.			
Section 7, paragraph x.	In suits for specific performance— (a) of a contract of sale. (b) of a contract of mortgage. (c) of a contract of lease, (d) of an award.	According to the amount of the consideration. According to the amount agreed to be secured. On the amount recoverable in the first year. According to the amount or value of the property in dispute.	(a) Section 8. (b) " (c) " (d) section 3 and rules under section 3.	(a) The same as in column 3. (b) " (c) " (d) As regards land, as valued by the rules under section 3 (vide rule 5,) in regard to other property presumably the market value, but this is left to judicial decision as sec. 8. does not apply. <i>Note.</i> —The suits in this paragraph mostly fall under the Punjab Tenancy and Land Revenue Act: where any such suit falls under the Civil Law the value for court-fee purposes would be one year's rent, and for jurisdiction the same. The paragraph appears only to relate to land.	
Section 7, paragraph xi.	In suits between landlord and tenant as described in clauses (a) to (f) inclusive.	Amount of rent for the preceding year.	Section 8.		

SCHEDULE SHOWING THE VALUE OF SUITS FOR PURPOSES OF COMPUTING  
COURT-FEES AND OF DETERMINING THE JURISDICTION  
OF THE COURTS, RESPECTIVELY—*Contd.*

1	2	3	4	5
Value of suits for the purpose of computing court-fee under the Court-fees Act, 1870.				
Court-fees Act.	Nature of suits.	Value for court-fee purposes.	Suits Valuation Act and Rules.	Value for purposes of jurisdiction.
Schedule II, Articles 1-13.	Miscellaneous applications and Petitions.	As fixed in each case	.....	No jurisdiction value necessary.
Schedule II, Article 14.	Marriage Dissolution Act.	Fixed Value of stamp required Rs. 5.	.....	"
Schedule II, Article 17.	<p>Plaint or memorandum of appeal in each of the following suits :—</p> <p>I. To alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court.</p> <p>II. To alter or cancel any entry in a register of the names of proprietors of revenue paying estates.</p> <p>III. To obtain a declaratory decree where no consequential relief is prayed.</p>	<p>The Court-fees Act lays down a minimum fixed fee of Rs. 10. But in rule 1 of Chapter X of the High Court under powers conferred by section 2 of the Suit Valuation Act VII of 1857, and with the previous sanction of the Local Government has directed that suits of the nature described under</p>	<p>A to land—section 4 and section 3 and rules. Other suits—and provided for.</p> <p>"</p> <p>"</p> <p>"</p> <p>"</p>	<p>As in column 4.</p> <p>"</p> <p>"</p> <p>"</p> <p>"</p>

Schedule II, Article 17.— <i>Contd.</i>	IV. To set aside an award. V. To set aside an adoption. VI. Every other suit where it is not possible to estimate at a money value the subject-matter in dispute, and which is not otherwise provided for by this Act.	head V and certain suits falling within the scope of head VI of article 17. Schedule II of the Court-fees Act shall, for the purposes of that Act, be treated as if their subject-matter were of the value of Rs. 200 on which the fee is Rs. 22-8-0 under Punjab Act, VII of 1922.	Section 9, rule 5, Chapter X of this volume. Section 9, rule I (iv) Chapter X of this volume. Section 4 and section 3 and rules and section 9, rules 1 and 4, Chapter X of this volume.	Section 9, rule 5, Chapter X of this volume. Section 9, rule 5, Chapter X of this volume.	Section 9, rule 5, Chapter X of this volume.
Schedule II, Article 18.	Application under Schedule II, paragraphs 17 and 18, of the Code of Civil Procedure.	Fixed Value of stamp required Rs. 10.	As in column 4.	As in column 4.	As in column 4.
Schedule II, Article 19.	Agreement under Order XXXVI Rule I, of the same Code.	Fixed Value of stamp required Rs. 10.	As in column 4.	As in column 4.	As in column 4.
Schedule II, Article 20.	Every petition under the Indian Divorce Act, except petitions under section 44 of the same Act, and every memorandum of appeal under section 55 of the same Act.	Fixed Value of stamp required Rs. 10.	As in column 4.	As in column 4.	As in column 4.
Schedule II, Article 21.	Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1865.	Fixed Value of stamp required Rs. 20.	As in column 4.	As in column 4.	As in column 4.
Schedule II, Article 22.	Plaint or memorandum of appeal in a suit by a reversioner under the Punjab Customary Law for a declaration in respect of an alienation of ancestral land.	Fixed Value of stamp required Rs. 20.	As in column 4.	As in column 4.	As in column 4.

*Note*—The Court having jurisdiction is specified in the special laws in question.

Same as I—column 3, and failing this where no value is expressed it must be left to judicial decision.

C—RULES FRAMED BY THE JUDICIAL COMMISSIONER'S COURT  
AT NAGPUR.

(*Judicial Commissioner's Civil Circular, Part II-8, Page 15.*)

VALUATION OF SUITS.

1. Under Section 9 of the Suits Valuation Act, 1887, and under the same section of the said Act as applied to Berar, the Judicial Commissioner with the previous permission of the Chief Commissioner directs that suits of the following classes shall for the purposes of the Court Fees Act, 1870, the Suits Valuation Act, 1887, the Central Provinces Courts Act, 1904, and the Berar Courts Law 1905, be treated as if the subject-matter of such suits were of the value of Rs. 400:—

- (1) Suits for the restitution of conjugal rights, for declaration of the validity of marriage, or for a divorce.
- (2) Suits for the custody or guardianship of a minor.
- (3) Suits for a declaration that an adoption is valid or invalid.

Provided that if a suit for declaration that an adoption is valid or invalid affects a title to property, then the value of that property, if it exceeds Rs 400, shall be deemed to be the value of the subject-matter of the suit.

2. In exercise of the powers conferred by Section 3 of the Suits Valuation Act, VII of 1887, as applied to the Hyderabad Assigned District and with previous sanction of the Governor-General in Council, the Resident is pleased to make the following rules for determining the value of land for the purpose of jurisdiction.

I. In suits for the possession of land (mentioned in Section 7, paragraph V, of the Court Fees Act, VII of 1870) the value of the land for the purpose of jurisdiction shall be deemed to be as follows:—

- (1) When the land is held on settlement for a period not exceeding 30 years and pays the full assessment to the Government a sum equal to ten (twelve and half by amendment No. 19, dated 19-7-1924) times the survey assessment.
- (2) When the land is held on permanent settlement for any period exceeding 30 years and pays the full assessment to the Government a sum equal to twenty times the survey assessment.
- (3) When the whole or any part of the annual survey assessment is remitted, a sum computed under paragraph (1) or paragraph (2) of this rule, as the case may be, in addition to twenty times the assessment or the portion of assessment so remitted.
- (4) In other cases, the market value of the land.

II. Where the land falls partly under one and partly under another of the classes mentioned or referred to in Rule I the value of the land in each class shall be separately calculated.

III. In suits to enforce a right of pre-emption in regard to land (mentioned in Section 7, paragraph 6 of the Court Fees Act, VII of 1870,) the value of the land shall be computed in accordance with Rule I.

IV. In suits for specific performance of an award in regard to land (mentioned in Section 7, paragraph X, clause (d) of the Court Fees Act VII of 1870) the value of the land shall be computed in accordance with Rule I.

3. Numerous cases have come under notice in which suits for an injunction, for an easement, or for account have been treated as suits of which it was not possible to estimate the money value.

Under Section 7, clause IV (d) to (f) of the Court Fees Act, the plaintiff must in all such cases state the amount at which he values the relief sought and the plaint must be stamped in accordance with that valuation.

4. The effect of Section 7, clause VIII, of the Court Fees Act, is apt to be misunderstood. It seems to apply only to cases when the plaintiff had not petitioned the Court which ordered the attachment, but has proceeded at once to file a regular suit. When an attachment has been petitioned against in the executing Court, and the petition has either been allowed or disallowed and a suit has been filed by the unsuccessful party under Rule 63, Order 21 of the Code of Civil Procedure, such suit is one for a declaratory decree and the plaint should therefore bear a stamp of ten rupees in respect of the declaration or each of the declarations sought for.

5. It must be borne in mind that when two or more reliefs are asked for in the same suit, separate court-fee should be charged in respect of each relief.

6. It is expected that careful attention will be paid to the question of court-fees. The stamp on all plaints should be examined, and Courts should satisfy themselves that the right fee has been levied in each case.

7. The following rule for determining the value of land in Central Provinces for purpose of jurisdiction in the suits mentioned in the Court Fees Act, 1870, Section 7, paragraph V (b) has been made by the Local Government in exercise of the power conferred by Section 3 of the Suits Valuation Act, VII of 1887 :

In suits for possession of land mentioned in Section 7, paragraph V (b) of the Court Fees Act, 1870, the value of land for the purpose of jurisdiction shall be deemed to be as follows:—

Where the land forms an entire estate or a definite share of an estate, paying annual rent to Government or where the land forms

part of such estate and is recorded as aforesaid and such revenue is settled, but not permanently  $12\frac{1}{2}$  times the revenue so payable.

8. In all cases in which pleaders' fees are to be calculated upon a value other than the value as determined for the computation of Court Fees a note to this effect should be made at the end of the judgment. In the absence of such note all Muharrirs attached to Civil Courts who are entrusted with the drawing up of decrees are strictly prohibited from calculating pleaders' fee otherwise than on the value as determined for the computation of Court-fees.

In suits by a mortgagee, to foreclose the mortgage, no note need be recorded. The pleaders' fee should be calculated in the plaint as due under the mortgage.

#### D—RULES FRAMED BY THE OUDH CHIEF COURT.

In supersession of notification No. 779, dated June 18, 1889, the Chief Court with the previous sanction of the Government, hereby under Section 9 of the Suits Valuation Act, directs that the following classes of suits shall be treated for the purpose of the Court Fees Act, 1870, and of the Suits Valuation Act, 1837, as if their subject-matter were of the value hereinafter stated :—

1. (i) Suits in which the plaintiff sues the other party to an alleged marriage, either alone or with other defendants, for restitution of conjugal rights ... .. value Rs 100.
- (ii) Similar suits to establish, annul, or dissolve a marriage ... .. value Rs 200.
- (iii) Suits to establish a right to the custody or guardianship (including guardianship for the purpose of marriage) of a minor ... .. value Rs. 200.
- (iv) Suits to establish or annul an adoption or appointment by customary right of an heir ... value Rs 400.

#### *Value.*

- (a) for the purpose of the Court Fees Act,
  - suits of class (i), Rs. 100.
  - suits of classes (ii) and (iii), Rs. 200.
  - suits of class (iv), Rs 400.

(b) For the purpose of the Suits Valuation Act, 1887, such sum exceeding Rs 500 and not exceeding Rs. 2,000 as the plaintiff shall specify in the plaint.

#### *Explanation.*

(1) Classes (i) and (ii) do not include petitions under any special Act relating to the dissolution of marriage.

(2) Class (iii) does not include proceedings under the Guardians and Wards Act (VIII of 1890).

II. Suits for declaration that an alienation of immoveable property made by a person alleged to have only a restricted power of alienation becomes void on such person's death or after some other determinate period.

*Value.*

- (a) For the purposes of the Court Fees Act, 1870, as determined by that Act;
- (b) For the purposes of the Suits Valuation Act, 1887 :
  - (1) When the alienation is by a written instrument which declares the value of the interest purporting to be created, or the consideration for which the alienation is made, such value or amount ;
  - (2) In other cases, the market-value at the date of institution of the suit, of the property alienated, subject in either cases to the provisions of Part I of the Suits Valuation Act, 1887, and of the rules in force under the said part, so far as those provisions are applicable.

*Explanation :—*When the property alienated is right of occupancy in land, the value shall be deemed to be half the value of the land discharged from such right of occupancy.

III. Suits for account only, not being suits for such amount as may be found due on liquidation of accounts, and suits for account and administration as described in Order XX, r. 13 of the Code of Civil Procedure :

*Value.*

- (a) For the purposes of the Court Fees Act, 1870, as determined by that Act.
- (b) For the purposes of the Suits Valuation Act such amount exceeding Rs. 100 and not exceeding Rs. 500, as the plaintiff may state in the plaint.

IV. Suits for declaration (whether or not an injunction or damages be also claimed) that any of the following rights exists or does not exist, namely—

- a right of way,
- a right to open or maintain or close a door or window or a drain or a water-shoot (*paruala*),
- a right to or in a water course or to use of water,
- a right to build, to raise or alter or demolish a wall or to use an alleged party wall or joint staircase.

*Value.*

- (a) For the purposes of the Court Fees Act, 1870, as determined by that Act ;
- (b) For the purposes of the Suits Valuation Act, 1887,



- (1) if damages are not claimed, such amount exceeding Rs. 100 and not exceeding Rs. 500, as the plaintiff may state in the plaint,
- (2) if damages are claimed, the amount of such damages increased by Rs. 100.

V. Suits in which the plaintiff in the plaint seeks to set aside an award, and applications to file in Court an agreement to refer to arbitration or an award in a matter referred to arbitration without the intervention of a Court under paragraphs 17 and 20 of the Second Schedule of the Code of Civil Procedure, when or in so far as the award or the agreement relates to property :

*Value.*

- (a) For the purposes of the Court Fees Act, 1870, as determined by that Act.
- (b) For the purposes of the Suits Valuation Act, 1887, the market value of the property in dispute, subject to the Provisions of Part I of the Suits Valuation Act, 1887, and of the rules in force under the said part, so far as those provisions are applicable.

VI. The foregoing rules are subject to the following explanation :—

Subject to Rule III, a suit falling within any of the above descriptions shall not be deemed to be excluded therefrom merely by reason of the plaint seeking other relief in addition to that described in any of the foregoing rules.

*Value of Suits* :—In cases where the rules made by the Chief Court under section 9, Act VII of 1887 (see the preceding rule), modify the provisions of the Court Fees Act, VII of 1870, the former must be followed. Those cases are given below :—

**Oudh Rules.**

- (i) For establishing, annulling, or dissolving a marriage, Rs. 200—Rs. 15.
- (ii) For custody or guardianship of a minor, Rs. 200—Rs. 15.
- (iii) For annulling an adoption Rs. 400—Rs. 30.

**Court Fees Act.**

- Schedule II, Art. 17, vi. Where it is not possible to estimate at a money-value the subject-matter in dispute, Rs. 10.
- As above Rs. 10.
- Schedule II, Art. 17, v. To set aside an adoption, Rs. 10.

## APPENDIX XI

### THE MADRAS CIVIL COURTS ACT (ACT III OF 1873)

#### PART I.

##### PRELIMINARY.

Short title.                      1. This Act may be called the  
Madras Civil Courts Act III of 1873.

It extends to all the territories for the time being under the Government of the Governor of Fort St. George in Council except the tracts respectively under the jurisdiction of the Agents for Ganjam and Vizagapatam.

\*                      \*                      \*                      \*

#### PART II.

Local limits of jurisdiction of District Court or Subordinate Judge.                      10. The Local Government shall fix, and may from time to time vary the local limits of the jurisdiction of any District Court or Subordinate Judge's Court under this Act.

\*                      \*                      \*                      \*

Local jurisdiction of District Munsifs.

11. The High Court shall fix and may from time to time modify the local jurisdiction of District Munsifs.

Jurisdiction of District Judge or Subordinate Judge in original suits.

12. The jurisdiction of a District Judge or a Subordinate Judge extends, subject to the rules contained in the Code of Civil Procedure to all original suits and proceedings of a civil nature.

The jurisdiction of a District Munsif extends to all like suits and proceedings not otherwise exempted from his cognizance, of which the amount or value of the subject-matter does not exceed three thousand rupees.\*

\* The words "three thousand rupees" were substituted for the words "two thousand five hundred" by Madras Act III of 1916.

Appeals from decrees of District Courts, **13.** Regular or special appeals, shall when such appeals are allowed by law, lie from the decrees and orders of a District Court to the High Court.

Appellate jurisdiction of District Court, Appeals from the decrees and orders of Subordinate Judges and District Munsifs shall, when such appeals are allowed by law lie to the District Court except when the amount or value of the subject-matter of the suit exceeds rupees five thousand, in which case the appeal shall lie to the High Court.

Appellate jurisdiction of Subordinate Judge, Provided that where a Subordinate Judge's Court is established in any District in a place remote from the station of the District Court, the High Court may, with the previous sanction of the Local Government, direct that appeals from the decrees or orders of District Munsifs within the local limits of the jurisdiction of such Subordinate Judge be preferred in the Court of the latter.

Disposal of appeal by District Judge, Provided that the District Judge may remove to his own Court, from time to time appeals so preferred and dispose of them himself, or may subject to the orders of the High Court refer any appeals from the decrees and orders of the District Munsifs, preferred in the District Court to any Subordinate Judge within the District.

Valuating suits for immoveable property, **14.** When the subject-matter of a suit or proceedings is land, a house or a garden, its value shall for the purposes of the jurisdiction conferred by this Act be fixed in a manner provided by the Court Fees-Act, 1870, section 7, clause 5.

It has been held that S. 8 of the Suits Valuation Act takes effect against this section in cases to which the former applies. See *Official Receiver of Ramnad v. Arunachalam Chettiar*, 65 M. L. J. 420 cited at p. 622. As to applicability of section in cases falling under Art. 17 or Art. 17-A, see *Veeramma v. Butchayya*, 50 Mad. 646 and *Arumuga Mudaliar v. Venkatachala Pillai*, 56 Mad. 716 cited at pp. 597 and 601. The latter decision has also been followed in an unreported case C.M.A. No. 8 of 1934 decided on 11-9-1935 (69 M. L. J. Notes of recent cases, p. 24.)

## PART III.

\* \* \* \*

28. The High Court\* may by notification in the official Gazette, invest, within such local limits as it shall from time to time appoint any District or Subordinate Judge with the jurisdiction of a Judge of a Court of Small Causes for the trial of suits cognizable by such Courts up to the amount of Rupees one thousand †

Investiture of Subordinate Judge with Small Cause jurisdiction. and any District Munsif with the same jurisdiction up to the amount of Rupees three hundred ‡

Investiture of District Munsif with similar jurisdiction. and, may by like notification, wherever it thinks fit, withdraw such jurisdiction from the District or Subordinate Judge or Munsif so invested.

## SMALL CAUSE JURISDICTION.

By virtue of powers conferred by Section 28 of the Madras Civil Courts Act III of 1873, as amended by the Decentralization Act IV of 1914, and further amended by the Madras Civil Courts (Second Amendment), Act XVIII of 1926, the High Court is pleased to issue the following revised notification in supersession of the judicial notification, dated 18th March 1872, published at page 556, of the Fort St. George Gazette, dated 18th March 1873, of the High Court notification, dated 1st March 1915, published at page 556, Part II of the Fort St. George Gazette, dated 9th March 1915, and of the notification published at pages 331-332, Part II of the Fort St. George Gazette, dated 13th February 1917;—

All Subordinate Judges in the Presidency of Fort St. George shall have and exercise the jurisdiction of a Judge of a Court of Small Causes for the trial of suits cognizable by such courts up to the amount of one thousand rupees, and all District Munsifs within the Presidency of Fort St. George shall have and exercise the same jurisdiction up to the amount of one hundred rupees.

2. Those District Munsifs who have been specially empowered by the High Court to exercise extended Small Cause powers up to two hundred rupees and who at present are exercising the powers shall have and exercise such powers up to the amount of three hundred rupees.

3. Subordinate Judges and District Munsifs shall exercise the jurisdiction within the local limits of their jurisdiction as fixed by Sections 10 and 11 of Act III of 1873 unless such Small Cause jurisdiction has been, or shall hereafter be expressly withdrawn or modified by the High Court.

4. Where the Subordinate Judge and the District Munsif have concurrent jurisdiction in suits cognizable as Small Causes up to the amount of hundred rupees, the courts shall be guided in their procedure by Section 15 of the Code of Civil Procedure, Act V of 1908

\* By Act XVIII of 1926 the words 'High Court' for the words 'Local Government'.

† the words 'one thousand' for the words 'five hundred'.

‡ the words 'three hundred' for 'fifty', were substituted

[High Court notification, dated 23rd July 1926, published at page 1041, Part II of the Fort St. George Gazette, dated 3rd August 1926, as amended by the corrigendum, dated 29th August 1926 published at page 1196, Part II of the Fort St. George Gaz. dt., dated 7th September 1926, Dis. No. 1496/26.]

29. (1) The High Court may, by general or special order, authorise any Subordinate Judge to take cognizance of, or any District Judge, to transfer to any Subordinate Judge under his control any proceedings under the Indian Succession Act, 1925, which cannot be disposed of by District Delegates.

Exercise by Subordinate Judge of jurisdiction of District Judge in certain proceedings.

(2) The District Judge may withdraw any such proceedings taken cognizance of by, or transferred to a Subordinate Judge, and may either himself dispose of them or transfer them to a Court under his control competent to dispose of them.

(3) Notwithstanding anything contained in section 13, proceedings taken cognizance of by or transferred to a Subordinate Judge under the provisions of this section shall be disposed of by him subject to the law applicable to like proceedings when disposed of by the District Judge :

## APPENDIX XII.

### THE MADRAS CITY CIVIL COURTS ACT

(ACT VII OF 1892)

\* \* \* \* \*

3. The Local Government may, by notification in the official Gazette, establish a Court to be called the Madras City Civil Court with jurisdiction to receive, try and dispose of all suits and other proceedings of a civil nature not exceeding two thousand five hundred rupees in value and arising within the City of Madras, except suits or proceedings which are cognizable.

Constitution of the city Court.

- (a) by the High Court, as a Court of admiralty, or vice-Admiralty, or, as a Colonial Court of Admiralty, or, as a Court having testamentary, intestate or matrimonial jurisdiction, or
- (b) by the Court for the relief of insolvent debtors, or
- (c) by the Small Cause Court.

<sup>1</sup> **3-A.** Subject to the exceptions specified in section 3, the Local Government may, by notification in the Official Gazette, invest the City Court with jurisdiction to receive, try and dispose of all suits and other proceedings of a civil nature arising within the City of Madras and of such value not exceeding ten thousand rupees as may be specified in the notification.

\* \* \* \*

**9.** When the subject-matter of any suit or other proceeding is land or a house or a garden, its value for the purposes of the jurisdiction conferred on the City Court by this Act shall subject to the other provisions of the Act, be fixed in manner provided by the Court-fees Act, 1870 (VII of 1870), Section 7, clause (v).

**10.** Fees chargeable for serving or executing processes issued by the City Court or served or executed under its direction or control, shall be such as the High Court may prescribe with the approval of the Governor of the Fort St. George in Council.

\* \* \* \*

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<sup>1</sup> Sec. 3-A was added by Madras Act I of 1935. For Notification under this section conferring jurisdiction on the City Civil Court up to Rs. 5000, see Notification No. 216 dated 22-3-1935 published in Fort St. George Gazette dated 26-3-1935 Pt. I, p. 488.

**13.** Whenever any suit or proceeding in the City Court is settled by agreement of the parties before issues have been settled or any evidence recorded half the amount of institution fees paid by the plaintiff shall be repaid to him by the Court.

Repayment of half fees on settlement before hearing.

**14.** When under section 13 of the Letters Patent for the High Court, dated the twenty-eighth day of December, 1865, or under section 25 of the Code of Civil Procedure (XIV of 1882) the High Court has removed for trial by itself any suit from the City Court, fees on the scale for the time being in force in the High Court as a Court of ordinary original jurisdiction shall be payable in that Court in respect of the suit and proceedings therein.

Allowance of fees paid in the City Court in cases removed to High Court.

Provided that, in the levy of any such fees which, according to the practice of the Court are credited to the Government, credit shall be given to the plaintiff in the suit for any fee which in the City Civil Court he has already paid under the Court-fees Act, 1870 (VII of 1870) on the plaint.

**15.** (1) The Court authorised to hear appeals from the City Court shall be the High Court.

Appeals.

(2) The period of limitation for an appeal from a decree or order of the City Court shall be the same as that provided by law for an appeal from a decree or order of the High Court in the exercise of its original jurisdiction.

**16.** Nothing in this Act contained shall affect the original civil jurisdiction of the High Court.

Provided that :—

(1) if any suit or other proceeding is instituted in the High Court which in the opinion of the Judge who tries the same (whose opinion shall be final) ought to have been instituted in the City Civil Court, no costs shall be allowed to a successful plaintiff, and a successful defendant shall be allowed his costs as between attorney and client;

(2) in any suit or other proceeding pending at any time in the High Court, any judge of such Court may at any stage thereof make an order transferring the same to the City Civil Court if in his opinion such suit or proceeding is within the jurisdiction of that Court and should be tried therein;

(3) in any suit or other proceeding so transferred the Court-fees Act, 1870 (VII of 1870) shall apply credit being given for any fees levied in the High Court.

\* \* \* \* \*

## APPENDIX XIII.

### THE MADRAS CITY CIVIL COURT AND PRESIDENCY SMALL CAUSE COURTS (AMENDMENT) ACT (V of 1916)

\* \* \* \* \*

2. Notwithstanding anything contained in the Presidency Small Cause Courts Act, 1882 (XV of 1882) and the Madras City Civil Court Act, 1892 (VII of 1892) all suits cognizable by the Court of Small Causes of Madras whereof the amount or value of the subject-matter exceeds one

Institution in the Madras City Civil Court of certain suits organizable by the Madras Small Cause Court.



thousand rupees may at the election of the plaintiff be instituted in the Madras City Civil Court which shall have jurisdiction to try and dispose of such suits according to the provisions of the Madras City Civil Court Act, 1892 (VII of 1892).

3. (1) Notwithstanding anything contained in the Presidency Small Cause Courts Act

Removal of suits in the Madras Presidency Small Cause Court to the High Court or to the Madras City Civil Court.

1882 (XV of 1882) and the Madras City Civil Court Act, 1892 (VII of 1892) where an application is made to the High Court of Judicature at

Madras under section 39 (1) of the Presidency Small Cause Courts Act, 1882 (XV of 1882) in any suit referred to therein, the High Court may either remove the suits to its own file or transfer the same to the Madras City Civil Court.

(2) Where a suit is ordered to be transferred as aforesaid to the Madras City Civil Court the provisions of sub sections 2, 3 and 4 of section 39 and of section 40 of the Presidency Small Cause Courts Act, 1882 (XV of 1882) shall *mutatis matandis* and subject to the pecuniary limits of the jurisdiction of the Madras City Civil Court apply.

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